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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1885.~~ 1887

17 No. ~~819. 1885~~ 203 ~~16~~

THE UNITED STATES, APPELLANT,

vs.

THE MARSHALL SILVER MINING COMPANY AND THE COLORADO CENTRAL CONSOLIDATED MINING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED FEBRUARY 6, 1885.

also cited 114 US 244

Marshall Silver Co. US 276

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1885.

No. 819.

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1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered, that heretofore and on, to wit, the 15th day of March, A. D. 1883, came Benjamin Harris Brewster, Attorney-General of the United States, and Andrew W. Brazee, United States attorney for said district, and filed in said court their bill of complaint and sued out of and under the seal of said court a writ of subpœna against the Marshall Silver Mining Company, of Georgetown, and the Colorado Central, Consolidated Mining Company.

And the said complaint is in words and figures as follows, to wit:

Bill of complaint.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States in and for said district.

To the honorables the judges of the circuit court of the United States for said district:

The United States of America, by Benjamin Harris Brewster, its Attorney-General, and Andrew W. Brazee, its attorney for said district, brings this its bill of complaint against the Marshall Silver Mining Company, of Georgetown, and the Colorado Central Consolidated

2 Mining Company, and thereupon shows to your honors:

That your orator was on the 8th day of June, in the year of our Lord one thousand eight hundred and seventy-four, and for a long time prior thereto had been, the owner in fee of certain lands lying in Griffith mining district, in the county of Clear Creek, in said district, known as Tunnel Lode No. 5, bounded and described as follows, with magnetic variation at fifteen degrees thirty minutes east, to wit: Beginning at corner No. 1, post in mound of stones marked No. 1 and 247, from which the southwest corner of section nineteen in township four south of range seventy-four west bears south seventy-nine degrees thirty-five minutes west at the distance of four thousand nine hundred and eighty-seven feet, and the peak of Independent Mountain bears south fifty-nine degrees east; thence from said corner No. 1 north fifty degrees east seven hundred feet to corner No. 2, post in mound of stones marked No. 2 and 247, from which the mouth of Marshall Tunnel bears south forty-four degrees east at the distance of seven hundred and forty-four feet; thence from said corner No. 2 north thirty-five degrees east thirty-three feet to southerly boundary of survey No. 231, made for the claim of Erskine McClelland et al. upon the Cayuga Lode, (250) two hundred and fifty feet to corner No. 3, post in mound of stones marked No. 3 and 247; thence north forty degrees west twenty-five feet to northerly boundary of said survey No.

3 231 fifty feet to corner No. 4, post in mound of stones marked No. 4 and 247; thence south thirty-five degrees west two hundred feet to northerly boundary of said survey No. 231 two hundred and fifty feet to corner No. 5, post in mound of stones marked No. 5 and 247; thence south fifty degrees west five hundred and ninety feet to northerly

boundary of said survey No. 231 seven hundred feet to corner No. 6, marked No. 6 and 247; thence south forty degrees east fifty feet to the place of beginning, containing one (1) acre and nine-hundredths (9-100) of an acre of land, more or less, embracing two hundred and fifty feet northeasterly and seven hundred feet southwesterly from discovery on said Tunnel Lode No. 5, as represented by yellow shading in the plat in the patent hereinafter referred to, reference being thereto had.

And your orators further show to your honors that on the 7th day of June, A. D. 1874, your orator was, and for many years prior thereto had been, the owner in fee of certain lands and premises known as Cayuga Lode so called, which, as hereinafter described, embraced a portion of said premises hereinbefore described as Tunnel Lode No. 5, together with other premises adjoining; which said Cayuga Lode was and is known as lot No. 231, situated in said mining district in said county and district of Colorado, and bounded and described as follows, with magnetic variation at fifteen degrees thirty minutes east, to wit:

4 Beginning at corner No. 1, a post in mound of stones marked No. 1 and 231, from which the southwest corner of section nineteen in township four south of range seventy-four west of the sixth principal meridian bears south eighty degrees west at the distance of forty-two hundred and forty feet; thence from said corner No. 1 north sixty-seven degrees east nine hundred and fifty feet to corner No. 2, a post in mound of stones marked No. 2 and 231; thence north forty-nine degrees thirty minutes east five hundred and fifty feet to corner No. 3, a post in mound of stones marked No. 3 and 231; thence north forty-one degrees fifteen minutes east four hundred and sixty-two feet to southerly boundary of survey No. 229 patented to Charles R. Fish with his claim upon the Saco Lode, six hundred and forty-four feet to southerly boundary of survey No. 185, patented to the Burlington Silver Mining Company with its claim upon the Indigo Lode, six hundred and eighty-three feet to easterly boundary of said survey No. 185 ten hundred and eighty feet to the easterly boundary of said survey No. 229 thirteen hundred feet to corner No. 4, a post in mound of stones marked No. 4 and 231; thence north twenty-three degrees west fifty feet to corner No. 5, No. 5 and 231 marked on a cliff of rocks; thence south forty-one degrees fifteen minutes west six hundred and forty-eight feet to northerly boundary of said survey No. 185 seven hundred and eight feet to southerly boundary of

5 said survey No. 185 seven hundred and seventy-four feet to northerly boundary of said survey No. 229 and southerly boundary of survey No. 204, made for the claim of David E. Dulaney upon the Hidden Treasure Lode, eleven hundred and five feet to westerly boundary of said survey No. 229 eleven hundred and forty-one feet to westerly boundary of said survey No. 204 thirteen hundred feet to corner No. 6, a post in mound of stones marked No. 6 and 231, from which post No. 4 of said survey No. 229 bears north thirty-four degrees forty-five minutes east at a distance of one hundred and seventy-one and five-tenths feet; thence from said corner No. 6 south forty-nine degrees thirty minutes west five hundred and fifty feet to corner No. 7, a post in mound of stones marked No. 7 and 231; thence south sixty-seven degrees west nine hundred and fifty feet to corner No. 8, a post in mound of stones marked No. 8 and 231; thence south twenty-three degrees east fifty feet to the

place of beginning, containing two and thirty-five hundredths (2.35–100) acres of land, more or less, and embracing twenty-eight hundred linear feet of the Cayuga Lode, to wit, thirteen hundred linear feet northeasterly and fifteen hundred southwesterly from Discovery Shaft on said lode, as represented by yellow shading in plat in patent of your orator to Erskine McClelland et al. upon the Cayuga Lode hereinafter mentioned, reference being thereto had.

And your orator further shows to your honors that on the 28th
6 day of September, A. D. 1867, the said land and premises known as the Cayuga Lode, described as aforesaid, was the property of your orator on its public domain, and being mineral land subject to location and entry as mineral lands for mining purposes, and situate in Griffith mining district in the county of Clear Creek and State of Colorado, in the district of lands subject to sale at Central City, was duly located as a mining claim.

That on the 14th day of December, A. D. 1872, the possessory right under such location to said Cayuga Lode and surface ground described as aforesaid had by mesne conveyances become and was vested in Erskine McClellan, Joseph Rist, and Walter N. Webster.

That before the day last aforesaid a survey of said Cayuga Lode and surface ground described aforesaid was made for the purpose of enabling the said McClellan, Rist, and Webster to obtain a patent therefor from your orator, & was approved by the surveyor-general of your orator for the then Territory of Colorado on the 5th day of December, A. D. 1872.

That on the 14th day of December, A. D. 1872, the said Erskine McClellan and Walter N. Webster duly filed their application with the register and receiver at the United States land office at Central City, Colorado, for a patent from your orator for the said Cayuga Lode, and surface ground described as aforesaid, which said application was accom-
7 panied by proof of posting a plat of said lode and surface ground and notice of said application on said premises, a transcript of the field-notes of said survey of their claim upon said lode duly verified with proof of their possession an abstract of their title, proof of their citizenship, proof of improvements made by them and their grantors upon said premises, and publication notice, in accordance with and pursuant to the statute in such case made and provided, and the rules and regulations of your orator's General Land Office in such case made and provided and then in force and effect in said land district.

And your orator further shows that afterwards said Erskine McClelland and Walter N. Webster in apt time duly filed proof of the publication of notice of their said application, and proof that the plat of their said survey of said lode and surface ground with the notice of their said application had remained posted thereon for sixty days, proof of the sums paid by them for surveying and platting, for filing their said application in the local land office aforesaid for publication of the notice of their said application, and to the receiver of said land office for said lode and surface ground, together with their application to purchase the same.

And your orator further shows to your honors that at the date of the filing of said application for patent the interests of the parties as
8 shown by the abstract of title accompanying said application appeared to be and was as follows, to wit:

That said McClellan had a one-half, the said Webster a one-fourth, and

Joseph Rist a one-fourth interest therein, but the said application was signed by said McClellan and Webster, and not by said Rist.

And your orator further shows to your honors that during the period of the publication of the said notice of said application for patent, to wit, on the 15th day of February, A. D. 1873, a claim adverse to said application was filed by F. J. Marshall, then president of the said Marshall Silver Mining Company for the Marshall Silver Mining Company in said land office, and within the proper time thereafter suit was commenced by the Marshall Silver Mining Company against the said Erskine McClellan et al., based upon such adverse claim to the said Cayuga Lode so made as aforesaid, in the district court for Clear Creek County.

That on the thirtieth day of January, A. D. 1874, the said Marshall Silver Mining Company, the plaintiff in said suit, by its attorneys, Butler and Morrison, moved the dismissal of said cause at the cost of the plaintiff, and the same was then and there dismissed at the cost of the plaintiff.

Your orator further shows to your honors that on the 5th day of November, A. D. 1881, the clerk of the district court of said Clear Creek County certified unto the register and receiver of your orator
9 for your orator's land office, at the city of Central aforesaid, that there was then no suit pending in said court involving the right as between the parties to said suit to the premises in question.

And your orator further shows to your honors that the officers of your orator in your orator's General Land Office, being ignorant of the covin frauds and conspiracies hereinafter alleged, upon consideration of the application for said patent and of the papers and proceedings in that behalf hereinbefore set forth, allowed an entry by said McClellan, Webster, and Rist, of said Cayuga Lode and surface ground, as hereinbefore described, and thereupon your orator on, to wit, the 31st day of January, A. D. 1882, issued its patent dated that day for said Cayuga Lode and surface ground to the said Erskine McClellan, Walter N. Webster, and Joseph Rist.

And your orator further shows to your honors that the Marshall Silver Mining Company filed in the office of the register and receiver of your orator at said Central City application for a patent from your orator to it, the said company, for Tunnel Lode number five, being a portion of Lode No. 5, and surface ground described as aforesaid, on December 14th, A. D. 1872, on the same day that the said replication for the said Cayuga Lode and surface ground was filed as aforesaid; that the original field-notes and plat of survey of said Tunnel Lode No. 5, filed with said
10 original application for patent thereof, were not filed in the General Land Office of your orator, and were never reported there; that the said original field-notes and plat of said Tunnel Lode No. 5, as originally applied for, did not embrace any land in conflict with said Cayuga Lode, as described in the said application field-notes and plat of survey and patent thereof.

That there being no conflict in the claims shown by the said original field-notes and plat of survey of said Tunnel Lode No. 5, and the field-notes and plat of survey of said Cayuga Lode, the application for each of said lodes was received by the register and receiver of your orator's land office at Central City aforesaid, and notices thereof were respectively and properly published.

That the said Marshall Silver Mining Company never completed its entry on its said original application for patent, based upon its said original field-notes and plat of survey of said Tunnel Lode No. 5 and original notice thereof.

And your orator further shows to your honors that during the month of April, 1873, and for a long time before and afterwards, one Samuel P. Lathrop was register of your orator's said land office at Central City, and one William A. Arnold was receiver of public moneys of your orator for the district of lands subject to sale at said Central City, in the then Territory of Colorado, and acting as such register and receiver; that while
11 holding the offices aforesaid they and one Hugh Butler, Frank J. Marshall, G. W. Hall, and others to your orator unknown, they and said others, or some of them, being officers of or stockholders in the said Marshall Silver Mining Company, conspiring and confederating with each other, and intending to cheat and defraud your orator out of its patent for the said aforesaid Tunnel Lode No. 5, and to prevent the said Erskine McClellan and Walter N. Webster from obtaining a patent to any part of said Cayuga Lode and surface ground, as hereinafter described, by some means to your orator unknown, wrongfully, in furtherance of such confederation and conspiracy, induced said Joseph Rist to authorize sa'd Hugh Butler to withdraw the application for patent on the Cayuga Lode, so made by the said McClellan and Webster, to the extent of his, the said Rist's, interest therein, upon pretense that such application had never been authorized by him, the said Rist, and with intent to have the said register and receiver to base thereon a pretended decision, that the effect of said Rist's withdrawal rendered the entire application of said McClellan and Webster for patent as aforesaid null and void, and to rule that no application would, after such withdrawal, remain pending for the said Cayuga Lode or any part thereof.

That afterwards, and on the 28th day of April, A. D. 1873, that said Hugh Butler, in pursuance of said confederation and conspiracy, filed in the land office of your orator, at said Central City, a pretended
12 withdrawal by said Rist of said application of said McClellan and Webster, so far as his interest in the application for patent of said McClellan and Webster for the said Cayuga Lode was concerned.

That thereupon and on the 30th day of April, A. D. 1873, the said Samuel B. Lathrop, register as aforesaid, and said William A. Arnold, receiver as aforesaid, wrongfully, in furtherance of said confederation and conspiracy, ruled and decided that the effect of such withdrawal was to render the entire application for patent to said Cayuga Lode null and void, and wrongfully ruled and decided that no application was then pending for the said Cayuga Lode or any part thereof.

That in furtherance of said confederation and conspiracy no notice of the said decisions and rulings by said register and receiver aforesaid was ever given to the said McClellan and Webster, or either of them, but on the contrary such notice to them was carefully withheld in order to secretly carry out the interests and objects of the said confederacy and conspiracy aforesaid.

And your orator further represents to your honors that afterwards and on the 20th day of May, 1873, the said Frank J. Marshall, Hugh Butler, George W. Hall, and other persons to your orator unknown, in further-

ance of said conspiracy and confederation, or some of them, caused to be written out certain documents purporting to be an approved
13 amended plat and field-notes of survey purporting to be made by or under the authority of the then surveyor-general of your orator for the then Territory of Colorado of the said Tunnel Lode No. 5, and the surface ground thereof as hereinbefore particularly described, which pretended amended plat and field-notes embraced certain grounds included within and in conflict with the said Cayuga Lode claim, and on June 2nd, 1873, while the said suit was still pending, the said register and receiver, wrongfully, in furtherance of said confederation and conspiracy, without any publication or posting of notice of any application for patent of the said land included in said pretended amended plat and field-notes of survey of the said Tunnel Lode No. 5, allowed the said Marshall Silver Mining Company to make entry of the land described in the said pretended amended survey, and forwarded the said pretended amended survey, plat, and field-notes to your orator's General Land Office at Washington, and your orator, relying wholly upon the truthfulness of the same and being ignorant of the fact that the same conflicted with and included a part of the said Cayuga Lode and surface ground, issued its patent for the said Tunnel Lode No. 5 to the said Marshall Silver Mining Company on the 8th day of June, 1874, dated that day, and unwittingly included in said patent a portion of the said Cayuga Lode and surface grounds hereinbefore described, to wit: sixty-four one-hundredths ($\frac{64}{100}$) of an
14 acre thereof, as nearly as your orator can estimate the same.

That by reason of the premises and the fraudulent confederation and conspiracy aforesaid the said last-mentioned patent was fraudulently and wrongfully obtained from your orator as aforesaid and the said Erskine McClellan, Joseph Rist, and Walter N. Webster were wrongfully and fraudulently, by the same ways and means, deprived of the legal title to a large portion of the said Cayuga Lode and surface ground, described as aforesaid, to wit: Sixty-four one-hundredths ($\frac{64}{100}$) of an acre thereof, as nearly as your orator can estimate the same, and that the said sixty-four one-hundredths of an acre is of great value, to wit, of the value of one hundred thousand dollars, as your orator is advised and charges the fact to be.

That the said last-mentioned patent is a cloud upon the title of your orator to the lands therein described and a cloud upon the title of said Erskine McClellan, Joseph Rist, and Walter N. Webster to so much of the said Cayuga Lode and surface ground as is therein included and which in equity and good conscience belongs to the said Erskine McClellan, Joseph Rist, and Walter N. Webster.

That the said Marshall Silver Mining Company was a corporation duly organized under the laws of the late Territory of Colorado, during the existence of said Territory, and remained and is such corporation under the laws of the State of Colorado.

15 That the said Colorado Consolidated Central Mining Company is a corporation duly organized under the laws of the State of New York and has been such corporation for four years last past.

That the said Colorado Central Consolidated Mining Company claims to be the owner of or to have some interest in or lien upon the said described Tunnel Lode No. 5 and surface ground described as aforesaid, under said patent thereof.

And your orator further avers that the said Marshall Silver Mining Company and the said Colorado Central Consolidated Mining Company and its privys in title hereinafter named, and the trustees and officers of said companies knew at the time they respectively acquired or claimed to have acquired title or ownership by or under color of said patent to the said Tunnel Lode No. 5, that the said patent has been fraudulently obtained from your orator as hereinbefore alleged and were advised of the rights and equities of the said Erskine McClellan, Joseph Rist, and Walter N. Webster in the premises.

And your orator further shows to your honors that on the 17th day of November, 1879, the said Marshall Silver Mining Company conveyed the said Tunnel Lode No. 5, with other lands, to George Turnbull, by deed recorded in book 49 page 197, of the records in the recorder's office of Clear Creek County; that on the 15th day of December, 1879, C. E. Knoblauch and Paul Lichtenstein conveyed to the said Colorado Central Consolidated Mining Company, by deed recorded in said book 49,
16 page 216, the undivided one-half part of all that part of said Tunnel Lode No. 5, which was by the said Marshall Silver Mining Company conveyed to William P. Linn, all of which said deeds are a cloud upon the title of your orator and a cloud upon the title of said McClellan, Rist, and Webster, to the lands described in their said patent.

And your orator further shows to your honors that for many years last past the said Colorado Central Consolidated Mining Company has been, is now, and threatens to continue, taking large quantities of valuable ore from the said Tunnel Lode No. 5 to the great prejudice of and irreparible damage to your orator in the premises, and to the great prejudice of the interests of and irreparable damage to the said McClellan, Rist, and Webster.

And your orator further shows to your honors that notwithstanding the conveyances aforesaid, the said Marshall Silver Mining Company has some interest in or lien upon said Tunnel Lode No. 5, and surface ground thereof, hereinbefore described, as your orator is advised and charges the fact to be.

Forasmuch, therefore, as your orator is without remedy in the premises save in a court of equity, and to the end that the said Marshall Silver Mining Company and the said Colorado Central Consolidated Mining Company, which are made parties defendant to this bill, may be required to make full and direct answers to the same, but not under oath,
17 answers under oath being hereby waived, and that said patent to the said Marshall Silver Mining Company for the said Tunnel Lode No. 5, described as aforesaid, may be declared void and be delivered up to be cancelled, and the said deeds and conveyances may each be set aside and declared void so far as they purport to convey said Tunnel Lode No. 5, or any part or parcel thereof, or any interest therein, as clouds upon the title of your orator and as clouds upon the title of the said McClellan, Rist, and Webster in the premises, that said deeds may be decreed to be delivered up and cancelled, and that the said defendants, and each of them, may be forever enjoined and restrained from asserting any right to or lien upon said Tunnel Lode No. 5, as described in the patent thereof; and that they, and each of them, their, and each of their, officers, agents, servants, lessees, and employees, and each of them, be forever enjoined and

restrained from working or mining upon or in anywise intermeddling with the said Tunnel Lode No. 5, or the appurtenances, franchises, or privileges thereto belonging or in anywise appertaining.

18 May it please your honors that a temporary writ of injunction in this behalf may be issued pending the proceedings herein; and that the writ of subpœna in chancery may issue herein directed to the said defendants, and each of them, commanding them, and every of them, to appear and answer all and singular the premises and abide the order, judgment, and decree of the court in this behalf, and commanding the marshal of said district that he serve and execute said writ and make his return thereon according to the rules and practice in matters of this sort.

(S'g'd) BENJAMIN HARRIS BREWSTER,
Attorney-General.
ANDREW W. BRAZEE,
Attorney of the United States for said District.

(Endorsed:) No. 1145. United States circuit court. The United States vs. The Marshall Silver Mining Company et al. Bill of complaint. Benj. Harris Brewster, Att'y Gen'l. A. W. Brazee, att'y of U. S. Filed Mar. 15, 1883. (S'g'd) Edward F. Bishop, clerk.

And the said subpœna is in words and figures as follows, to wit:

19 *Subpœna and marshal's return.*

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA,
District of Colorado, ss:

The President of the United States of America to the Marshall Silver Mining Company, of Georgetown, and the Colorado Central Consolidated Mining Company, greeting:

You and every one of you are hereby commanded that you appear before the judges of the circuit court of the United States of America, for the district of Colorado, at the city of Denver, in said district, on the first Monday in May next (it being the 7th day of May, A. D. 1883), to answer the bill of complaint of the United States of America, this day filed in the office of the clerk of said court, in said city of Denver, and then and there to receive and abide by such judgment or decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

Witness the honorable Morrison R. W. Waite, Chief Justice of the Supreme Court of the United States of America, and the seal of the
20 said circuit court, at the city of Denver, aforesaid, this 15th day of March, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the 107th year.

{ SEAL CIR. CT. U. S. } (S'g'd) EDWARD F. BISHOP, *Clerk*,
By WM. E. ROGERS, *Deputy Clerk.*

Memorandum.

The above-named defendants are hereby notified that unless they and each of them shall enter their appearance in the office of the clerk of said court, at the city of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed and a decree entered accordingly.

(S'g'd) EDWARD F. BISHOP, *Clerk*,
By WM. E. ROGERS, *Deputy Clerk.*

Marshal's return.

DISTRICT OF COLORADO, *ss:*

DENVER, COLO., *March* 23, 1883.

I have duly executed the within writ by serving the same upon the Marshall Silver Mining Company, of Georgetown, by personally delivering a true copy of the within to Frank J. Marshall, president of said company, at Denver, Arapahoe County, Colorado, this 22nd day of March, A. D. 1883, also served upon the Colorado Central Consolidated Min-
21 ing Company, by personally delivering a true copy of the within to G. W. Hall, agent of said company, at Georgetown, Clear Creek County, Colorado, on the 21st day of March, A. D. 1883.

(S'g'd) WALTER A. SMITH, *Marshal*,
By J. W. BELCHER, *Deputy Marshal.*

(Endorsed:) Gen. No. 1145. Circuit court of the United States for the district of Colorado. In chancery. The United States of America vs. The Marshall Silver Mining Company of Georgetown et al. Subpœna. Returnable to rule day, first Monday in May, A. D. 1883. (S'g'd) Edward F. Bishop, clerk. Filed this 23rd day of March, A. D. 1883. (S'g'd) Edward F. Bishop, clerk, by Wm. E. Rogers, deputy clerk. Benj. Harris Brewster, Att'y Gen'l. Andrew W. Brazee, dist. att'y, of Denver, compl'ts' sol'r.

And afterwards, and on, to wit, the 3rd day of April, A. D. 1883, came the said defendants by Messrs. Morrison & Fillens, their attorneys, and filed in said court and in said cause their demurrer to the complaint heretofore filed herein. And the said demurrer is in words and figures as follows, to wit:

Demurrer.

UNITED STATES OF AMERICA, *ss:*

22 In the circuit court of the United States, district of Colorado.

THE UNITED STATES OF AMERICA
vs.
THE MARSHALL SILVER MINING COMPANY and the Colorado Central Consolidated Mining Company. } In chancery sitting.

The demurrer of defendants to the bill of complaint of complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained

to be true, in such manner and form as the same are therein and thereby set forth and alleged, demur to said bill, and for cause of demur show that—

1. The bill shows unwarranted laches and delay in the bringing thereof, so that the relief sought was barred before the filing of the bill.

2. The bill does not show that it was brought within three years after the discovery of the alleged facts constituting the alleged fraud set forth in the bill, but the contrary thereof.

3. The allegations of facts constituting fraud are not sufficiently specific to be answered unto or to necessitate the inference of fraud, and are not charged as done by either the defendants nor by any of their officers with their connivance or collusion.

23 4. The bill upon its face shows that the action of the register and receiver in allowing No. 5 Lode to be patented was right as matter of law, or at most they committed a judicial error in which the claimants of the Cayuga title acquiesced for more than the period allowed for appeal or to perfect title to the land in controversy under the statute of limitations or to allow of relief in equity.

5. The bill is not brought by the proper parties, and is not consistent with the relief sought.

6. The bill shows no such actual fraud or gross irregularity as to render the patent of the No. 5 Lode void or voidable.

7. That the date upon which the said McClelland and Webster are alleged to have filed their application for patent (December 14, 1882) is wholly inconsistent with the other dates in the bill stated, and renders the whole series of allegations therein made unintelligible.

8. The bill is otherwise informal, insufficient, and devoid of equity upon its face.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of co'plaint, these defendants demur to the said bill, and to all the matters and things therein contained, and pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill; and they pray to be dismissed with

24 their reasonable costs in this behalf sustained.

(S'g'd) MORRISON & FILLENS,
Solicitors for Defendants.

(Endorsed:) No. 1145. Circuit court U. S. United States of America v. The Marshall Silver Mining Co. Demurrer. Filed Apr. 3, 1883. (S'g'd) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 7th day of May, A. D. 1883, came again the said complainant, Andrew W. Brazee, esq., and filed in said court and in said cause his motion to strike from the files the demurrer heretofore filed herein. And the said motion is in words and figures as follows, to wit:

Motion to strike demurrer from files.

In the United States circuit court in and for the district of Colorado, ss:

THE UNITED STATES OF AMERICA,
vs.
THE MARSHALL SILVER MINING COMPANY & The Colorado Central Consolidated Mining Company.

And now comes Andrew W. Brazee, attorney of the United States for the district of Colorado, and moves the court to strike from the
25 files of this cause the alleged demurrer of the defendants and for a decree pro confesso u'on the ground that the same does not comply with and is in violation of the 31st rule in equity.

(S'g'd) ANDREW W. BRAZEE,
Att'y of U. S.

(Endorsed): No. 1145. U. S. circuit court. The United States vs. The Marshall Silver Mining Company et al. Motion to strike demurrer from files. A. W. Brazee, att'y of U. S. Filed May 7, 1883. (S'g'd) Edward F. Bishop, clerk.

And afterwards and on, to wit, the 8th day of May, A. D. 1883, the same being one of the regular juridical days of the May term, A. D. 1883, of said court—present, the honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Motion to strike out demurrer granted.

THE UNITED STATES OF AMERICA,
vs.
THE MARSHALL SILVER MINING COMPANY, of Georgetown, et al.

1145. In chancery. Bill to vacate patents for an injunction, and for other relief.

At this day comes the said complainant by A. W. Brazee, esq., its solicitor and the said defendant; by R. S. Morrison, esq., their solicitor, also comes.

And the motion of the said complainant to strike from the files
26 herein the demurrer of the said defendants to the bill of complaint herein, coming on now to be heard, it is ordered by the court that the said motion be granted.

Nevertheless, upon motion of the said defendants, it is ordered by the court that they have leave to demur again to the said bill of complaint within four (4) days from this day, as they shall be advised.

And afterwards, and on, to wit, the 12th day of May, A. D. 1883, came again the said defendants by their attorneys aforesaid, and filed in said court and in said cause their demurrer to the bill of complaint heretofore

filed herein. And the said demurrer is in words and and figures as follows, to wit:

Demurrer.

UNITED STATES OF AMERICA, *ss:*

In the circuit court of the United States, district of Colorado.

THE UNITED STATES OF AMERICA
vs.
THE MARSHALL SILVER MINING COMPANY AND THE Colorado Central Consolidated Mining Company.

The demurrer of defendants to the bill of complaint of complainants.

27 These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, demur to said bill, and for cause of demur show that:

1. The bill shows unwarranted lashes and delay in the bringing thereo', so that the relief sought was barred before the filing of the bill.

2. The bill does not show that it was brought within three years after the discovery of the alleged facts constituting the alleged fraud in the bill, but the contrary thereof.

3. The allegations of facts constituting fraud are not sufficiently specific to be answered unto or to necessitate the inference of fraud, and are not charge' as done by either the defendants nor by any of their officers with their connivance or collusion.

4. The bill upon its face shows that the action of the register and receiver in allowing No. 5 Lode to be patented was right as matter of law, or at most that they committed a judicial error in which the claimants of the Cayuga title acquiesced for more than the period allowed for appeal or to perfect title to the land in controversy under the statute of limitations or to allow of relief in equity.

28 5. The bill is not brought by the proper parties and is not consistent with the relief sought.

6. The bill shows no such actual fraud or gross irregularity as to render the patent to the No. 5 Lode, *be* void or voidable.

7. That the date upon which the said McClelland and Webster are alleged to have filed their application for patent (December 14, 1882) is wholly inconsistent with the other dates in the bill stated, and renders the whole series of allegations therein made unintelligible.

8. The bill is otherwise informal, insufficient, and devoid of equity upon its face.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, these defendants demur to the said bill and to all the matters and things therein contained, and pray the judgment of this honorable court whether they shall be compelled to make any furtcer or

other answer to the said bill, and they pray to be dismissed with their reasonable costs in this behalf sustained.

(S'g'd.) BELA M. HUGHES,
R. S. MORRISON,
JACOB FILLINS,
Solicitors for Defendants.

Address of counsel: Bela M. Hughes, Denver, Col.; R. S. Morrison, Georgetown, Col.; Jacob Fillins, Georgetown, Col.

29 I, R. S. Morrison, counsel practicing in said circuit court, and one of the solicitors for defendants in this cause, do certify that in my opinion the within demurrer is well founded in point of law.

(S'g'd) R. S. MORRISON,
Solicitor for Defendants.

STATE AND DISTRICT OF COLORADO;
County of Clear Creek, ss:

Before me the subscribed, personally appeared George W. Hall, who, being duly sworn, saith that he is the agent and superintendent of the Colorado Central Consolidated Mining Company, one of the defendants, and that the within demurrer is not interposed for delay in said cause, and that he makes this affidavit on behalf of all the defendants.

(S'g'd) GEORGE W. HALL,

Sworn and subscribed before me, this 11th day of May, 1883.

(S'g'd) S. H. SHEPARD,
U. S. Commissioner.

(Endorsed:) No. 1145. Circuit court U. S. United States of America vs. The Marshall Silver M. Co., et al. Demurrer. Filed May 12, 1883. (S'g'd) Edward F. Bishop, clerk. Morrison & Fillins, sol'r's for def't's.

30 And afterwards and on, to wit, the 28th day of June, A. D. 1883, the same being one of the regular juridical days of the May term, A. D. 1883 of said court—present, the honorable George W. McCrary, circuit judge, and the honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Demurrer to bill overruled. Defendants to answer in 40 days.

THE UNITED STATES OF AMERICA
vs.
THE MARSHALL SILVER MINING COMPANY et al.
} 1145. In chancery. Bill to vacate patents, and for other relief.

At this day comes the said complainant, by A. W. Brazee, esq., its solicitor; and the said defendants by B. M. Hughes, esq., their solicitor, also come; and the demurrer of the said defendants to the bill of complaint herein having heretofore come on to be heard, and having been argued by counsel and by the court taken under advisement, and the court being now sufficiently advised in the premises, it seemeth to the court here that the said bill of complaint and the matters therein contained is sufficient in law, and so the said demurrer is overruled.

And thereupon, on motion of the said defendants, it is ordered
31 by the court that the said defendants answer the said bill of complaint within forty (40) days from this day, as they shall be advised.

And afterwards and on, to wit, the 4th day of August, A. D. 1883, came the said defendant, the Colorado Central Consolidated Mining Company, and filed in said court and in said cause its separate answer to the bill of complaint heretofore filed herein.

And the said answer is in words and figures as follows, to wit:

Answer of Colorado Central Consolidated Mining Co.

UNITED STATES OF AMERICA, *ss:*

In the circuit court of the United States, District of Colorado.

THE UNITED STATES OF AMERICA
vs.
THE MARSHALL SILVER MINING COMPANY and the Colorado Central Consolidated Mining Company. } In chancery.

The answer of the Colorado Central Consolidated Mining Company, one of the defendants to the bill of complaint of the United States of America.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imper-
32 fections in the said bill contained, for answer thereunto, or to so much and such parts thereof as the defendant is advised it is material or necessary for it to make answer unto, answering, says:

This defendant admits that on the 8th day of June, 1874, the complainant was the owner of the premises in the bill of complaint described as the Tunnel Lode No. 5, so far as the legal title thereto is involved or concerned, subject to the entry and payment therefor, theretofore made, on the 2nd day of June, A. D. 1873, by the Marshall Silver Mining Company as defendant to said bill, which company at that time and long prior thereto, as this defendant is advised and believes, had a full and complete possessory title to said premises as a lode mining claim duly located on the public domain of the United States.

This defendant further answering the complaint admits that the United States, on the date alleged in said complaint, was owner of the premises described in the complaint as the Cayuga Lode, subject to the same title of the Marshall Silver Mining Company hereinbefore mentioned to the said premises, so far as the same conflicted with or were parcel of the premises described in the complaint as the Tunnel Lode No. 5.

This defendant further answering the complaint denies that on the 28th day of September, A. D. 1867, or at any time, the said land and premises called in said bill of complaint the Cayuga Lode, was duly located
33 as a mining claim under the name of the Cayuga Lode, as averred in said bill, and denies that on the date charged in said bill, or at

any time, any possessory right under any such pretended location had by mesne conveyance, became vested in the said Erskine McClelland, Joseph Rist, and Walter N. Webster, or either of them.

And this defendant further answering the complaint says it may be true for anything, this defendant or its officers know to the contrary, that a survey of said pretended Cayuga Lode and surface ground described in said bill was made for the purpose of enabling the said McClelland, Rist, and Webster to obtain a patent therefor, and that such survey was approved by the surveyor-general of the then Territory of Colorado, and that they filed with the register and receiver of the said United States land office the various plats, transcripts, affidavits, and other papers in said bill set forth, in connection with such their application for patent, and that the relative interest of the said applicants, McClelland, Webster, and Rist, were as charged in said bill, and that the adverse claim to application for such patent was filed as therein charged, and that the same was dismissed and the dismissal thereof certified as charged in the bill of complaint, but that this defendant is an utter stranger to all and every such matters and cannot form any belief concerning the same, and calls for strict proof thereof as the same are averred.

34 This defendant further answering the complaint admits that on the 31st day of January, A. D. 1882, patent of the United States issued for said Cayuga Lode to said McClelland, Webster, and Rist, as it is informed and believes, but denies that the same was issued in ignorance, as in said bill charged, but avers that if any covin, fraud, or conspiracy existed in connection with the issuance of the patent of the tunnel Lode No. 5, the same and all facts and connection therewith were on the 31st day of January, A. D. 1882, the date of the issuance of said Cayuga patent, as well known to the officers of the United States General Land Office and to the several parties interested in the issuance of said Cayuga patent as they were at the time of the filing of the bill in this cause.

This defendant further answering the complaint as to the mere fact that the Marshall Silver Mining Company filed its application for patent to said Tunnel Lode No. 5, admits, upon information and belief, such averment to be true; but whether the said lode was entered and paid for and its patent issued upon the original field-notes and plat of survey filed with the original application for patent thereof or upon amended plat and field-notes, and whether or not the original field-notes were filed in the General Land Office, and whether or not the original field-notes embraced the land in conflict between said No. 5 Lode and said Cayuga Lode, this defendant says it was and is an utter stranger to said application for patent, and as to all and every such matters, except certain particulars hereinafter specifically admitted or denied, it cannot form and belief concerning the same, and calls for strict proof thereof as the same is avered.

35, 36 This defendant further answering the complaint admits that Samuel P. Lathrop and William A. Arnold were officers in said land office at Central City at the time charged in said bill of complaint; and upon like information and belief it denies that the said Hugh Butler or Frank J. Marshall, or any other person, conspired or confederated to cheat or defraud the complainant out of its patent for the said Tunnel Lode No. 5, or to prevent the said McClelland and Webster from obtaining patent to any part of said Cayuga Lode. And as to the said G. W.

Hall, it denies upon its own knowledge and the knowledge of its officers that he in any wise conspired or confederated as aforesaid; and denies that said G. W. Hall at, or any time before, the issuance of said patent to the No. 5 Lode was either officer or stockholder in said Marshall Silver Mining Company. It admits that said Rist authorized said Hugh Butler to withdraw the application for patent of the Cayuga Lode in due form and without fraud, and avers upon like information and belief that such withdrawal did have the effect to render the entire application upon the said Cayuga Lode null and void, or at least that without any fraud, confederation, or conspiracy it was so adjudged by the proper officers of the said land office, which ruling was knowingly acquiesced in by all of the applicants of the Cayuga Lode without appeal or protest of any kind from the date when such ruling was made, to wit, for the period of about
37 ten years prior to the filing of the bill of complaint in this cause.

The defendant further answering the complaint denies upon information and belief that no notice of said decision and ruling of the said officers of the said land office was ever given to the said McClelland or Webster as charged in the complaint, but avers the truth and fact to be that specific notice thereof was given by the said register and receiver, or one of them, to both the said McClelland and the said Webster, being the sole parties in interest. The defendant denies upon information and belief that the said register and receiver allowed the said Marshall Silver Mining Company to make entry of the said Tunnel Lode No. 5 while any suit was pending as charged in said bill; but as to whether the entry which was allowed was made upon the original plat and field-notes, it avers itself to be an utter stranger to the said matters and has no belief upon the same, and therefore calls for strict proof of the same as averred.

The defendant further answering the complaint denies upon information and belief that the complainant was wrongfully or fraudulently deprived of the legal title to any portion of the said Cayuga Lode, as charged in the complaint or otherwise, and denies that they ever had any title, either legal or possessory, to any part of the said claim in conflict with said No. 5 Lode, and denies that the said premises in conflict, amounting as averred in said bill to sixty-four one hundredths of an acre, is of
38 the value of one hundred thousand dollars ($100,000) or any such sum as charged in said complaint. It denies that said Tunnel Lode No. 5 patent is a cloud upon the pretended title of complainant or upon the title of said Cayuga *n*ode, or that they or any of them in equity or good conscience have any claim to the same.

This defendant further answering the complaint admits the corporate organization of the Marshall Silver Mining Company and of the Colorado Central Consolidated Mining Company, as charged in the complaint, and that said last mentioned company claims to be the owner of an interest in said Tunnel Lode No. 5, that is to say, it avers that said last mentioned company is the owner in fee of the whole of said Tunnel Lode No. 5, including surface ground, as described in said bill of complaint.

This defendant further answering the complaint denies that it or its officers or trustees or any of them knew or had any means of knowing at the time when they *o*cquired title under said patent to the said Tunnel Lode No. 5 that the said patent had been fraudulently obtained, if such be the fact as charged in the complaint, and denies that they knew or were

informed of any right or equity in any manner claimed by the said McClelland, Rist, and Webster or either of them in the premises.

It admits that on the day of November, A. D. 1879, the said Marshall Silver Mining Company conveyed the said Tunnel Lode
38½ No. 5 with other mines to George Turnbull, and that by a series of mesne conveyances this defendant became the owner of the said Tunnel Lode No. 5, and hath been the owner of the same as patented since on or about the first day of January, A. D. 1879, but it avers that it obtained title by purchase without knowledge of any of the facts charged in said bill, except the fact of the issuance of the No. 5 patent, for the consideration of two hundred and fifty thousand dollars actually paid by this defendant for said property and other adjoining property of the same grantor, the specific value of the said No. 5 Lode or the specific amount paid for that particular parcel it being wholly impossible to state.

The defendant denies that said Marshall Silver Mining Company has any interest or lien upon said Tunnel Lode No. 5 or the surface ground thereof whatsoever.

This defendant further answering the complaint says that at the time when this defendant purchased the said Tunnel Lode No. 5 its purchase was an absolute sale to this defendant of the entire lode, as patented, and that none of the officers of this defendant, except George W. Hall, was ever an officer in said Marshall Silver Mining Company, and he not until long after said No. 5 Lode was patented; that in the negotiations leading to such purchase no notice of any defect in the No. 5 patent or of fraud in procuring the same was in any manner communicated to this
38¾ defendant company or to the officers of this defendant company, if any such defect or fraud in fact existed; and that the said pretended Cayuga Lode never had a valid discovery shaft or record, and was void in its location under the local rules and regulations of Griffith or Argentine mining district under the laws of the Territory of Colorado and the laws of the United States; that four pretended separate lodes were located and recorded at the same time from the same shaft by the same pretended locators, called, respectively, the Cayuga, the Canadice, the Huneyoy, and the Senaca lodes; that the apex of the pretended vein of the Cayuga lode, as defendant is informed and believes, does not enter into the conflicting area between said No. 5 and said pretended Cayuga Lode claim; that the annual labor required by law to be done on said claim has never been done nor any part of it in any one year since the act of Congress of May 10, 1872, requiring the same, and no labor whatever has been done upon said premises by or on behalf of the claimants of said Cayuga Lode since said date.

And the pretended survey and plat of the said Cayuga Lode has, ever since the year 1873 or 1874, by the complainant and the officers of its said local land office and the office of the surveyor-general of Colorado, been treated as a nullity, and long prior to the commencement of this suit or the issuance of the patent of the Cayuga Lode in the year 1882, to wit, between the date when said survey was set aside and the date of said Cayuga patent, all or nearly all of the surface ground and claim of
39 said Cayuga Lode was patented to other parties without protest on behalf of the claimants of the Cayuga Lode; that is to say, a part of said Cayuga survey has been patented as the Coulter Lode, survey lot No.

530; a part of it has been patented as the Reynolds Lode, survey lot No. 515; a part of it has been patented as the Tunnel Lode No. 6, survey lot No. 327; a part of it has been patented as the Tunnel Lode No. 7, survey lot No. 274; and since the issue of the said Cayuga patent a further part of the ground covered by its survey has been patented to other parties, as the Standard Lode, survey lot No. 1473, without reference to said Cayuga Lode in any manner whatsoever, and the existence of the said Cayuga survey is not now and never has been, since the year 1873 or 1874, recognized on the official plats of complainant in the several departments of its Land Office.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged, without this that there is any other cause, matter, or material or thing in the complainants' said bill of complain' contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and prays to be hence dismissed with its
40 reasonable costs and charges in this behalf most wrongfully sustained.

(S'g'd) THE COLORADO CENTRAL CONSOLIDATED MINING COMPANY,
By MORRISON & FILLIUS, *Its Solicitors.*

(Endorsed:) No. 1145. The United States of America vs. The Marshall Silver Mining Company et al. Answer of Colo. Cent. Con. M. Co. Filed Aug. 4, 1883. (S'g'd) Edward F. Bishop, clerk. Morrison & Fillius, sol., Georgetown, Colo.

And afterwards and on, to wit, the 7th day of August, A. D. 1883, came again the said defendant, The Marshall Silver Mining Company, by Messrs. B. M. & C. J. Hughes, his attorneys, and filed in said court and in said cause its separate answer to the bill of complaint heretofore filed herein. And the said separate answer is in words and figures as follows, to wit:

Answer of the Marshall Silver Mining Company.

THE UNITED STATES OF AMERICA,
District of Colorado:

41 In the circuit court of the United States for the district of Colorado.

THE UNITED STATES OF AMERICA, complainant, *vs.* THE MARSHALL SILVER MINING COMPANY and the Colorado Central Consolidated Mining Company, defendants.	In Chancery.

The separate answer of the Marshall Silver Mining Company, one of the defendants, to the bill of complaint of the United States, complainant.

This defendant, now and at all times hereafter saving unto itself all manner of benefit and advantage of exception which can or may be had or

taken to the many errors, uncertainties, and other imperfections in their said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

That prior to the 18th day of June, A. D. 1874, and on that date, until its patent therefor was issued to the defendant, the complainant was the owner of the premises in the bill of complaint described as the Tunnel Lode No. 5, so far as the legal title thereof was involved, subject to the possessory right and title of this defendant, which then and long prior thereto had a rightful and complete possessory title to said premises as a lode mining claim, duly located under the laws of the United
42 States, on the public lands of the same; and that the United States at the date aforesaid was also the owner of the premises described in said bill of complaint as property known as the Cayuga Lode, subject to the same kind of title of the defendant hereinbefore set forth to said premises so far as the same conflicted with or was a parcel of the premises described in said bill of complaint as the Tunnel Lode No. 5, but this defendant denies that the description of said Tunnel Lode claim in the boundaries thereof set up in said bill is correct.

The defendant now denies that on the 28th day of September, A. D. 1867, or at any time, the said premises, styled in said bill as the Cayuga Lode, was only located as a mining claim under the name of the Cayuga Lode as stated in said bill, and denies that on the date charged in said bill (December 14th, A. D. 1872), or at any time, any possessory right under any such pretended location had by mesne conveyances, become vested in the said Erskine McClellend, Joseph Rist, or Walter Webster.

And the defendant further answering says, it may be true, for anything this defendant or its officers know to the contrary, that a survey of said pretended Cayuga Lode and surface ground described in said bill was made for the purpose of enabling said McClelland, Rist, and Webster, to obtain a patent therefor, and that such survey was approved by the surveyor-general of the then Territory of Colorado, and that they
43 then filed with the register and receiver of the United States land office the various plats, transcripts, affidavits, notices, and other proofs and papers in said bill set forth in connection with such their application for patent; but this defendant is an utter stranger to every such matters and cannot form any belief concerning the same, and insists on proof thereof.

The defendant admits that the relative interest claimed by said McClelland, Webster, and Rist in said pretended Cayuga Lode were as charged in said bill at the date of filing of the application for the patent to said pretended Cayuga Node, if they had any such interest at all.

Defendant says as to the allegation of the plaintiff that the said application for patent to said Cayuga Lode, was not signed by the said Joseph Rist, this defendant states it is informed and believes that the name of the said Rist was signed to the same, but without authority from him to do so.

The defendant says that it did file a claim February 15th, A. D. 1873, adverse to the said McClelland, Webster, and Rist, for a patent to the so-called Cayuga Lode, and instituted a suit thereafter in proper time against said McClelland and Webster and Rist as defendants thereof, based on such adverse claim, in the district court of Clear Creek County, Colorado,

but denies that said suit was entitled as against said McClelland and others as alleghed in said bill.

44 Defendant is informed and believes that it is true that the attorneys for the defendant in said adverse suit did cause said suit to be dismissed, as stated in said bill, in the month of January, A. D. 1874, long after the decision of the register and receiver, which was given as aforesaid in the month of April, A. D. 1873, to the effect that the application for patent to the said Cayuga Node was null and void, and that no proper application therefor was then pending for said Cayuga Lode or any part thereof.

And the defendant, further answering, says it may be true, for anything the defendant known to the contrary, that the clerk of the said court certified to the said receiver and register of the land office at Central City, on the 5th day of November, A. D. 1881, that the said suit was dismissed; but this defendant is a stranger to that matter and cannot form any belief concerning the same. The defendant is informed and believes it to be true that a patent was issued, as stated in said bill, for the pretended Cayuga Lode on the 31st day of January, A. D. 1882, to the said McClelland, Webster, and Rist.

And defendant, further answering, says that it is true that the defendant did file its application for patent on the 14th day of December, A. D. 1872, for the Tunnel Lode No. 5.

And now this defendant says that it is true, as it is informed and believes, that the field-notes and plat of survey of said Tunnel Lode

45 as made were not transmitted to the General Land Office, for the reason that this defendant had procured an amended survey and plat to be made of said lode, as it had a right to have done, and which was subsequently approved by the proper officers of the plaintiff, and a patent issued thereon.

Now the defendant says that when its application to the land office at Central City was made, December 14th, A. D. 1872, to enter said Tunnel Lode, the plat by it filed showed on the face thereof, according to the survey thereof, that there was a conflict with the so-called Cayuga Lode, as it was necessary and proper to do, as this defendant is informed and believes, under the rules of the said land office. And the defendant says that thereafter, and after the application of the said McClelland, Webster, and Rist had been dismissed as stated in said bill, this defendant procured the amended survey and plat of said Tunnel Lode to be filed, which survey and plat did not show, as defendant is informed and believes, any such conflict, there being no such conflict in existence in said land office, the application of McClelland, Webster, and Rist having been rejected as stated.

And defendant says that this amended survey and plat did not conflict with the boundaries and description of the said Tunnel Lode as claimed by it in its application to enter the same, and by which description and boundaries the said Tunnel Lode was entered in said office and patented to defendant thereafter, and by which description and boundaries

46 the Tunnel Lode claimed by them was described and set forth in the notice of said claim published by the register of said office December 14th, A. D. 1872. And this defendant denies that there was no publication of the notice and no posting of notice of said application

to enter the land known as Tunnel Lode No. 5, but asserts that due notice was given of said claim by the said register as aforesaid, and the proper notices of the same duly posted on the premises as required by law; and the defendant denies that there ever was any change in the boundary lines of its claim to said Tunnel Lode as published by said register on the 14th day December, A. D. 1872.

And defendant says that it did complete its entry of said lode claimed by it upon its original application with the boundary set forth in it and in the notice of said register without any other change of its proceedings in said office save to show by an amended plat as stated that there was no conflict with said Cayuga Lode after the application therefor had been dismissed as aforesaid; and defendant says that any statement in said bill to the contrary is wholly untrue.

And now this defendant denies that during the month of April, A. D. 1873, or at any other time or times, Hugh Butler, Frank J. Marshall, George W. Hall, or any other person or persons, whether officers or stockholders in the Marshall Silver Mining Company or not, conspired and confederated with one another to cheat the United States out of its patent for the said Tunnel Lode No. 5, to prevent the said McClel-
47 land and Webster, or the said McClelland, Webster, and Rist, from obtaining a patent to any part of said Cayuga Lode by any fraudulent or corrupt means, and that in furtherance of such confederation conspired to induce the said Joseph Rist to authorize said Hugh Butler to withdraw the application for patent of the said Cayuga Lode as stated in said bill of complaint and upon any pretense whatsoever, or to procure a pretended decision of said register and receiver for such fraudulent purposes as are charged in said bill.

And defendant denies that the said Hugh Butler filed a withdrawal of said Rist of said application for patent to said Cayuga Lode, in pursuance of any confederation or conspiracy whatsoever, or did so to carry out any fraudulent purpose of this defendant in the premises whatever; and now this defendant says that the action of said Rist in so withdrawing his application for a patent to said last mentioned lode was wholly voluntary and not procured by any fraudulent action of this defendant or any of its officers, agents, or attorneys.

And further answering this defendant says that it admits that the register and receiver aforesaid decided that the effect of such withdrawal of said Rist was to render his application for patent to the Cayuga Lode without effect, and did hold that no proper application was thereafter pending in said land office; and defendant denies that the action
48 of said officers was wrongful, and denies that it was in pursuance or furtherance of any confederation and conspiracy charged in said bill; and defendant says that such action of said officers was, as said defendant is advised by counsel, legitimate and proper and within their scope and duty as such, governed by the rulings of the said General Land Office of the United States then in force and operation.

And defendant denies that notice of said decision of said officers was not given to said McClelland and Webster, and denies that it was withheld in order to carry out the interests and objects of the conspiracy and confederacy charged in said bill, or any other fraudulent purpose whatever but the defendant states that due notice was given to said McClelland and

Webster by said officers of their decision, and was given immediately after their decision was made, such decision having been made, as defendant is informed and believes, on the 30th day of April, A. D. 1873, more than ten years before this suit was brought.

And now this defendant states that the said McClelland and Webster did not only have notice of said decision of said land officers, but did acquiesced in the same, and did not at any time make and attempt whatever to prosecute their application for a patent to said Cayuga Lode in said land office until the 5th day of November, A. D. 1881, a period of eight and one-half years afterwards, during which time the defend-
49 ant and those claiming under it were in the actual, open, notorious, and visible possession of the property covered by the patent granted to them by the plaintiff on the 8th day of June, A. D. 1874, which patent embraces the sixty-four one-hundredths of an acre of land claimed by the said McClelland and Webster, and was a conformation of the decision of the said land office made on the 30th day of April, A. D. 1873.

And this defendant in this behalf answering says that the said McClelland and Webster are residents of the town of Georgetown, Clear Creek County, of this State; that they were such residents of said place when they filed their application for the patent to said Cayuga Lode, and that their residence in said place has been continuous, as this defendant is informed and believes, from the year A. D. 1867 to the present time.

And this defendant further answering says that the United States land office at Central City aforesaid is less than twenty miles distant from the said town of Georgetown, and that the property in dispute between the said Cayuga Lode and this defendant, to wit, the said sixty-four one-hundredths on an acre of land is within the distance of two miles from the said town of Georgetown.

And further this defendant says that the said McClelland and Webster, neither in person or by attorney, ever did take an appeal from the said decision of the register and receiver of the said land office at Central
50 City, nor take any other legal or proper or necessary steps whatsoever to have the said decision reversed, annulled, or set aside.

And further this defendant says that the said McClelland and Webster did well know that this defendant had been in actual, open, and notorious possession of the said sixty-four one-hundredth' of the acre of ground, working upon the same, taking ore therefrom a long time prior to the filing by this defendant of its application for the patent thereto, and prior to the application of the said McClelland and Webster for a patent as set up in said bill.

And this defendant now says that it was in such possession after the filing of its application for patent as aforesaid up to the time it sold its interest therein, and that its successors in title have been in open and visible possession ever since such sale was made.

And now this defendant says that after the said decision of the said land office at Central City, given as aforesaid, this defendant did procure an order from the surveyor-general of the United States for an amended survey, plat, and field-notes of said first survey of the Tunnel Lode No. 5, and that the said survey was duly made by the deputy surveyor of the United States according to law and filed in the said land office in the early part of the month of June, A. D. 1873, which amended

survey did embrace the said sixty-four one-hundredth' of the acre of ground therein, as hereinbefore stated.

51 And now this defendant says that all such proceedings to procure said amended survey and plat, and the filing thereof, were in conformity with law and the rule of the said General Land Office, and not in furtherance and promotion of any confederation and conspiracy as charged by the plaintiff.

And this defendant denies the allegation of the plaintiff that there was no publication or posting of notice of any application for a patent of said fraction of land included in said amended plat and field-notes of survey of Tunnel Lode No. 5, and that every allegation to that effect in said bill is absolutely untrue.

And this defendant says that after the filing of said amended plat and field-notes of survey, as aforesaid, it did make entry of the land described in the same, and that they were forwarded to the General Land Office of the United States, and that all such actings and doings in reference to the amended plat, survey, and field-notes were strictly according to law and in compliance with the order of the surveyor-general of Colorado, and the rulings of the said General Land Office, and free from all fraud upon the rights of the said McClelland and Webster, or McClelland, Webster, and Rist, or of the United States of America, and all charges in the said bill alleging bad faith and fraud in regard to the same are absolutely without foundation in truth.

And this defendant doth deny that the plaintiff was in any manner deceived or imposed upon by this defendant in the premises, or at all

52 ignorant of any fact or incident in connection with said amended survey, plat, and field-notes, and proceedings under defendant's application for patent, all of which were duly considered and passed upon by the said register and receiver, and approved of by the General Land Office of the plaintiff in every particular.

And this defendant says that the plaintiff did not unwittingly include in said patent the sixty-four one-hundredth' of an acre of the ground aforesaid, and that the said amended plat, survey, and field-notes were duly examined, passed upon by the officers of the plaintiff, and a patent for the said Tunnel Lode No. 5, under its amended survey, issued to the defendant, as this defendant is informed and believes, on the 18th day of June, A. D. 1874, as heretofore stated.

And now this defendant denies that the said patent was fraudulently and wrongfully obtained from the plaintiff by the fraudulent confederation and conspiracy charged in said bill or by any fraudulent conduct whatever; and denies that the said McClelland and Webster and Rist were wrongfully and fraudulently by such ways and means deprived of the legal title to that portion of the Cayuga Lode described as containing sixty-four one-hundredth' of an acre, and further denies that the said fractional part of an acre of ground is of the value of one hundred thousand dollars ($100,000) as stated by the plaintiff.

53 And this defendant further denies in that the said patent is a cloud upon the title of the plaintiff or upon the pretended title of the said McClelland, Rist, and Webster to said fractional part of said acre of the Cayuga Lode and surface ground, and does deny also that the same

belongs in equity and good conscience to them, the said McClelland, Rist, and Webster.

And defendant says that by reason of conveyances to the Colorado Central Consolidated Mining Company made by this defendant and others it has become the owner of the said Tunnel Lode No. 5, and the surface ground as aforesaid, under said patent therefor, including the said sixty-four one-hundredth' of an acre of ground.

And this defendant also denies that it procured the said patent by fraud from the plaintiff or fraud upon the rights of the said McClelland, Webster, and Rist. And it further that the said Colorado Central Consolidated Mining Company, and its privies hereinafter named, and the trustees and officers of this defendant and said Colorado Central Consolidated Mining Company, knew at the time they respectively asquired or claimed to have acquired title or ownership by or under said patent in the said Tunnel Lode No. 5, that it had been fraudulently obtained from the plaintiff as alleged in said bill; and denies that they were advised of the pretended rights and equities of the said McClelland, Webster, and
54 Rist in the premises, and again say that all charges in said bill to that effect are absolutely untrue, the defendant having acquired the title to said land covered by said patent without any fraud upon the plaintiff or any one else.

And this defendant further answering as to the charge in said bill that its codefendant has taken a large amount of ore from said Tunnel Lode No. 5 and intends to continue so doing, this defendant cannot clearly and fully answer as it is a stranger to the management of the affairs of said codefendant, but this defendant does deny that any such mining operations have ever or ever can be damaging to the plaintiff or to the prejudice or damage of the said McClelland, Webster, and Rist, as neither have any interest in said Tunnel Lode or any part thereof patented to this defendant.

And this defendant, further answering, says that it has no interest whatever in or lien upon said Tunnel Lode No. 5 and the surface ground thereof.

And this defendant denies that the plaintiff has any interest whatever in the premises, and denies that it has any right to maintain this suit against this defendant, the plaintiff having first issued its patent to this defendant for the land including the sixty-four one-hundredth' of an acre and subsequently issued its patent to McClelland, Webster, and Rist for land including the same, and thus parted with all interest in said
55 fractional acre, the real subject of litigation herein, to one or the other; that is, either to this defendant or to McClelland, Webster, and Rist aforesaid, who were the real part'es to maintain an action to the extent of their pretended interest in the premises, if cause exist against the defendant.

And this defendant denies that the plaintiff sustained any damage or prejudice whatever in consequence of the issue of the said patent to this defendant, the defendant having paid the lawful price of the land included therein as shown by the action of the plaintiff in the issue thereof.

And this defendant says further that if the plaintiff ever had any cause of suit against this defendant for or concerning any of the matters, transactions, or things in said bill of complaint mentioned, which this defend-

ant does in no manner admit, the same did accrue or arise more than ten years before the said bill of complaint was exhibited to this honorable court.

And further, the defendant says that the plaintiff has shown an entire want of diligence in not bringing this suit at an earlier period of time and in standing by that great length of time while the defendant and its successors in title were in open, notorious, and exclusive possession of the said Tunnel Node No. 5, under the patent granted by the plaintiff to the defendant, expending money in mining upon the same, and while the title to the said Tunnel Lode No. 5 was being passed from one party
56 to another, which said lapse of time and want of diligence this defendant asserts are by the rules of equity a bar to any relief prayed by the plaintiff in this suit.

And the defendant, further answering, denies all and every one of the charges of fraud made against this defendant and against the said Hugh Butler, George W. Hall, Joseph Rist, and Frank J. Marshall in the premises, and all such charges of fraud against the said Samuel P. Lathorp, register of the said land office at Central City, and William A. Arnold, the receiver of said land office; and says that if there was any defect or deficiency in the proofs or evidence of this defendant, made in said land office, to sustain the application for the patent granted to this defendant for said Tunnel Lode No. 5, such defect or deficiency was wholly unknown to this defendant when said receiver and register accepted, considered, and passed upon the same, and rendered their decision upon the facts then presented for their determination, and was not the result of an attempt to defraud the plaintiff or any one else through any conspiracy or confederation of the defendant with said Marshall, Hall, Arlnold, Lathrop, and Rist or other persons, to so defraud the plaintiff or any other person, as charged in said bill.

And this defendant further says that full opportunity was given by said register and receiver to said McClalland and Webster to be heard in regard to any right they might have in regard to said Tunnel Lode
57 No. 5 when they were notified that their application for patent had been dismissed by said officers, but they refused to make any appeal from such action of said land office.

And now this defendant says it is informed by counsel that the said McClelland and Webster having failed to appeal from the said decision of said officers, had no longer any standing as applicants for a patent on their pretended claim, and that this defendant had the right to proceed to amending its survey, plat, and field-notes and procuring its said patent as though the said McClelland and Webster had in their own presence openly in said land office abandoned all or any proceedings to obtain the patent they had applied for; and that the said McClelland and Webster had no right thereafter to be heard in that behalf in opposition to the rights acquired by this defendant through the patent granted to it as aforesaid; and further is so informed, that is, by counsel, that when they did so fail to appeal that there was no longer in the district court of Clear Creek County any cause for maintaining further the adverse suit of this defendant against them, the cause of action having then ceased.

And this defendant denies that there is any other matter, cause, or thing in the complainants' said bill of complaint contained material or neces-

sary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided
58 or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

(S'g'd) F. J. MARSHALL,
President of the Marshall Silver Mining Company.

BELA M. HUGHES,
CHAS. J. HUGHES,
Attorneys for Defendant, and Counsel as well.

(Endorsed:) No. 1145. In circuit court of the United States. In equity. The United States, compl'ts *vs.* Marshall Silver Mining Co. et al., def't. Separate answer of Marshall Silver Mining Co. Filed Aug 7, 1883. (S'g'd) Edward F. Bishop, clerk. B. M. & C. J. Hughes, counsel for def't, Marshal Silver M. Co.

And afterwards and on, to wit, the 1st day of September, A. D. 1883, came again the said complainant and filed in said court and in said cause its replication to the answer of the Colorado Central Consolidated Mining Company. And the said replication is in words and figures as follows, to wit:

Replication to answer of Colo. Cent. Consolidated Mg. Co.

59 UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States for the district of Colorado.

THE UNITED STATES OF AMERICA, complainant,
vs.
THE MARSHALL SILVER MINING COMPANY & the Colorado Central Consolidated Mining Company, defendants.

The replication of the United States of America, complainant, to the answer of the Colorado Central Consolidated Mining Company, herein.

This complainant, saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says, that it will ever maintain and prove its said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain and insufficient to be replied unto by this repliant.

Without this that any other matter or thing whatsoever in the said answer contained, material or effec'ual in law to be replied unto and not herein well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly
60 *and humbly* prays as in and by its said bill it has prayed.

(S'g'd) BENJAMIN HARRIS BREWSTER,
Attorney-General.
ANDREW W. BRAZEE,
Att'y of U. S. for Dist. of Colo.

(Endorsed:) No. 1145. The United States vs. The Marshall Silver Mining Co. et al. Replication to ans. of the C. C. C. Min'g Co. Filed Sep. 1, 1883. (S'g'd) Edward F. Bishop, clerk.

And thereupon, and on the same day, to wit, the 1st day of September, A. D. 1883, came again the said complainant and filed in said court and in said cause its replication to the answer of the Marshall Silver Mining Company heretofore filed herein. And the said replication is in words and figures as follows, to wit:

Replication to answer of Marshall Silver Mining Co.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States for the district of Colorado.

THE UNITED STATES OF AMERICA, complainant,
vs.
THE MARSHALL SILVER MINING COMPANY & the Colorado Central Consolidated Mining Company, defendants.

61 The replication of the said complainant to the answer of the said Marshall Silver Mining Company.

This complainant, saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says, that it will ever maintain and prove its said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain and insufficient to be replied unto by this replicant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things this replicant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

(S'g'd) BENJAMIN HARRIS BREWSTER,
Attorney-General.
ANDREW W. BRAZEE,
Attorney of U. S., Dist. of Colo.

62 (Endorsed:) No. 1145. The United States vs. The Marshall Silver Min'g Co. et al. Replication to ans. of M. S. Min'g Co. Filed Sept. 1, 1883. (S'g'd) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 2nd day of October, A. D. 1883, the same being one of the regular juridical days of the October term, A. D. 1883, of said court—

Present, the honorable Moses Hallett, district judge, the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Fixing time in which to take testimony.

THE UNITED STATES OF AMERICA
vs.
THE MARSHALL SILVER MINING COMPANY et al.
} 1145. In chancery. Bill to vacate patent for land, &c.

At this day comes the said complainant by A. W. Brazee, esq., its solicitor, and the said defendants by B. M. Hughes, esq., their solicitor, also come.

And thereupon as well the said complainant as the said defendant now here, in open court, consenting thereto, it is ordered by the court that the said complainant have sixty (60) days from this day within which
63 time to take proof herein, and that the said defendants have thirty (30) days thereafter, for the same purpose.

And afterwards, and on, to wit, the 4th day of February, A. D. 1884, the same being one of the regular juridical days of the October term, A. D. 1883, of said court—

Present, the honorable Moses Hallett, district judge the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Time to take testimony extended.

THE UNITED STATES OF AMERICA
vs.
THE MARSHALL SILVER MINING COMPANY et al.
} 1145. In chancery. Bill to vacate patents and for other relief.

At this day comes the said complainant by A. W. Brazee, esq., *his* solicitor, and the said defendant, The Marshall Silver Mining Company, by C. J. Hughes, esq., its solicitor, also comes.

And thereupon, on motion of the said complainant, it is ordered by the court that the taking proof for the defendant before J. W. Webster, an examiner, be continued until Monday next, the 11th instant, at the hour of 10 o'clock a. m.

64 And afterwards, and on, to wit, the 26th day of April, A. D. 1884, came John W. Webster, esq., an examiner in chancery of this court, and filed in said court and in said cause his report of testimony taken before him on behalf of complainant herein. And the said report is in words and figures as follows, to wit:

Examiner's report of complainant's testimony.

In the circuit court of the United States for the district of Colorado.

THE UNITED STATES, COMPLAINANT,
vs.
MARSHALL SILVER MINING COMPANY AND the Colorado Central Consolidated Mining Company, defendants. } In equity.

On application of complainant, by A. W. Brazee, esq., U. S. dist. att'y-solicitor, it appearing that the said complainant desires the evidence to be adduced in said cause to be taken orally, under the sixty-seventh rule of the Supreme Court of the United States and amendments, it is ordered that Wednesday, the 7th day of November, A. D. 1883, at two o'clock p. m., at my office in Denver, be, and is hereby, fixed as the time and place for taking the same, and that two days' notice be given to defendants' solicitor of time and place at which the examination of witnesses in said cause will commence.

Dated at Denver this November 2nd, A. D. 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

In the circuit court of the United States for the district of Colorado.

65 THE UNITED STATES, COMPLAINANT,
vs.
MARSHALL SILVER MINING COMPANY AND the Colorado Central Consolidated Mining Company, defendants. } No. 1145. In equity.

To Morrison and Fillius and B. M. and C. J. Hughes, solicitors for the above-named defendants:

Take notice that the complainant desires the evidence to be adduced in the above-entitled cause to be taken orally, under the sixty-seventh rule in equity, prescribed by the Supreme Court; and by an order of John W. Webster, esq., one of the examiners of said court, lately made in said cause, it is directed that two days' notice of the time and place at which the examination of witnesses in said cause will commence, be given to the defendants' solicitors. You will further take notice that the examination of witnesses on behalf of the complainant in said cause will commence before the said examiner, at his office-room, 10 McClintock Block, in the city of Denver, on the seventh (7th) day of November, A. D. 1883, at two o'clock p. m., and proceed as said examiner may direct.

Dated at Denver this November 2nd, A. D. 1883.

(Signed) A. W. BRAZEE,
Solicitors for Compl't.

We hereby acknowledge service on us of a copy of the within notice this 3rd day of November, A. D. 1883.

(Signed) B. M. & C. J. HUGHES, JR.,
Solicitors for M. Sil. M. Co.

(Signed) MORRISON & FILLIUS,
Solicitors for the C. C. C. M. Co.

UNITED STATES OF AMERICA,
District of Colorado, ss:

66 In the circuit court of the United States for the district of Colorado.

THE UNITED STATES
vs.
THE MARSHALL SILVER MINING COMPANY AND the Colorado Central Consolidated Mining Company. } In equity.

Testimony of witnesses taken under the 67th rule and amendment before me, John W. Webster, one of the examiners in chancery, duly appointed by an order of the circuit court of the United States for the district of Colorado, at my office in the city of Denver, State of Colorado, by virtue of an order by me made as examiner, fixing the time and place for the examination of witnesses, and notice of said order served upon the counsel for defendants, which are hereto annexed in a certain suit or matter in controversy now pending and undetermined in said circuit court, wherein the United States of America is complainant and the Marshall Silver Mining Company and the Colorado Central Consolidated Mining Company are defendants in behalf of the complainant, this Wednesday, the seventh day of November, A. D. 1883, at the hour of two o'clock p. m., at my office in Denver, said complainant appeared by A. W. Brazee, esq., U. S. dist. att'y, its solicitor, and the defendants appeared by Bela M. Hughes, esq., and R. S. Morrison, esq., their solicitors.

Thereupon the complainants produced in evidence Exhibit A, being a copy of all the papers in the matter of Central City, Colorado, mineral entry No. 1778, for the claim of Erskine McClellan et al. upon the Cayuga Lode, which is hereto attached as a part of the evidence in this case.

By consent of counsel of the respective parties objection to these exhibits or any portion thereof may hereafter taken by either party before the examiner.

67 Complainants now offer in evidence Exhibit B, being a copy of U. S. mineral patent No. 5288, for the claim of Erskine McClellan et al. upon the Cayuga Lode, which is hereto attached as a part of the evidence in this case.

Complainant now offers in evidence Exhibit C, being a copy of all the papers in the matter of Central City, Colorado, mineral entry No. 358, for the claim of the Marshall Silver Mining Company, of Georgetown, upon the Tunnel Lode No. 5, which is hereto attached and made a part of the evidence in this case.

Complainants now offer in evidence Exhibit D, being a copy of U. S. mineral patent No. 922, for the claim of the Marshall Silver Mining Company upon the Tunnel Lode No. 5, which is hereto attached and made a part of the evidence in this case.

Whereupon complainant produced WALTER N. WEBSTER, a witness of lawful age, who, being by me first duly sworn to testify the truth, the whole

truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, place of residence.

Ans. My name is Walter N. Webster, age 66 years, occupation a miner and prospector, and reside at Lawson, County of Clear Creek, State of Colorado.

Q. I show you the papers in Exhibit A, purporting to be dated at U. S. land office, Central City, Colorado, April 30th, 1873, directed to Erskine McClellan et al., and signed Samuel P. Lothrop, register, and William A. Arnold, receiver. I will ask if you ever received such a letter or a copy of it?

Ans. No, sir.

Q. Were you one of the applicants mentioned in Exhibit A for a patent on the Cayuga Lode?

Ans. Yes, sir.

Q. When did you first know that that application had been dis-
68 missed, or attempted to be dismissed by the land office at Central?

Ans. It was brought to my knowledge about 1880 or 1881.

Q. State what you know about the discovery of the Cayuga Lode, if anything; state when it was discovered and your means of knowledge of its discovery.

Ans. It was discovered in September, 1867, by myself and James W. Ames.

Q. Now, have you any knowledge of who has been in possession of that lode from that time to this? If so, state who has been in possession.

Ans. Mr. Erskine McClellan and myself and George McClellan a portion of the time. That is, the discovery on the claim we have held possession of, Joseph Rist held the one-fourth interest, and his widow after his death held it until she was bought out, I think in the fall of 1881.

Q. Do you know the ground that is covered or said to be covered by patents marked Exhibits B and D, being the Cayuga and No. 5 patents?

Ans. Yes.

Q. What has been your business?

Ans. Mining and prospecting.

Q. Where?

Ans. In the neighborhood of Georgetown and Lawson.

Q. How long?

Ans. Well, it is since 1866, or about 17 years.

Q. Are you acquainted with the value of mining property in the vicinity of the Cayuga and No. 5 lodes?

Ans. I believe I am.

Q. What in your opinion is the value of the mining property covered by both of said patents?

(Objected to by counsel for defendants because irrelevant, because ambiguous in form.)

Ans. Well, if I should give my honest opinion, it is worth a million and a half of dollars.

69 Q. Do you know George W. Hall?

Ans. I know him by sight. I am not personally acquainted with him.

Q. What do you know of your personal knowledge of his being in-

formed of, or notified of, any controversy between the owners of the Cayuga and No. 5 Lodes?

Ans. I can't say that I have any knowledge of that fact.

Q. At the date of this notice to which I called your attention heretofore of the date of April 30th, 1873, where did you reside?

Ans. At Georgetown, Clear Creek County, Colorado.

Q. Where was the United States land office of the district kept in which Cayuga and No. 5 Lodes are situated, at that time?

Ans. Central City.

Q. What communication, if any, by mail was there between Central City and Georgetown in April, 1873?

Ans. The mail was carried at that time daily I think by coach.

Q. How far is it from Georgetown to Central City?

Ans. Called 18 miles.

Cross-examination:

Q. How long since you have been personally at the Cayuga Lode?

Ans. I think it is about two years ago I was up there.

Q. Were there any workings then visible upon the Cayuga Lode made by the Cayuga claimants?

Ans. Yes, sir.

Q. What were they?

Ans. Yes, sir. A shaft we had made and a tunnel we had run.

Q. How deep was that shaft?

Ans. When we made the shaft we sunk it 30 feet; I mean the discovery shaft.

Q. How long is it since you expended any work or money on this Cayuga Lode?

Ans. I have not worked on it for some time. I have not ex-
70 pended any money very lately on it.

Q. Have you done any work or expended any money on this lode for the last 8 years?

Ans. I could not tell when I did any work there.

Q. When you say that property is worth a million and a half what do you mean; do you mean the two entire lodes or the area in conflict?

Ans. I mean where the No. 5 conflicts with the Cayuga.

Q. If the property is worth that, why have you let it alone for the last 8 or 10 years?

Ans. We haven't been idle; we were trying to perfect our title through application for patent.

Q. How can you say that when you say you did not know that your application was dismissed until 1880 or 1881?

Ans. I did not know that; that made no difference about our getting our patent through.

Q. What did Mrs. Rist pay for her ¼ interest in this property?

Ans. I do not know.

Q. Who did buy her interest?

Ans. I believe I heard that George McClellan bought it.

Q. Are you now interested in the result of this suit?

Ans. I am interested in the property.

Q. Have you kept up the annual labor on the lode for any one year since the application for patent was made on the Cayuga?

(Complainants' counsel objects as immaterial whether he did or not.)

Ans. I believe we did.

Q. For what year?

(Complainants' counsel objects for same reason before stated.)

Ans. After that it was worked by lessees.

Q. Please answer the question.

71 Ans. I cannot state exactly the year, but believe it was after we made application for the patent.

Q. For how many years did you do the annual labor?

Ans. I don't think more than one year; that it was under the old law, and no necessity for it.

Q. What did this annual work consist of?

(Complainants' counsel objects to all questions in regard to annual work after patent applied for.)

Ans. Mining on the Cayuga Lode.

Q. That is no answer to our question; please specify what the work was, the name of the person who did it, and on what part of the lode it was done, if it was done.

Ans. One man named Jim O'Connors and another one by the name of Stanley; I do not know what his first name was, they went in the drift where we had mined and got out ore.

Q. Who got out the ore?

Ans. They did.

Q. Do you know this of your own knowledge?

Ans. They told me so.

Q. How many lodes were recorded on the Cayuga shaft?

(Complainants object as immaterial and not cross-examination, and not the best evidence.)

Ans. One.

Q. How many more?

(Same objection as before.)

Ans. No more.

Q. Please point out on the map attached to Exhibit A the Cayuga discovery shaft or the place where it ought to be.

Ans. I can't tell by this map.

Q. State where that Cayuga shaft is situated with reference to

72 the mouth of the Marshall Tunnel.

(Complain'ts' counsel object because it is irrelevant, not cross-examination.)

Ans. The best I can answer is, in a westerly direction from the mouth of the Marshall Tunnel; I never measured the distance.

Q. Please give some point.

Ans. Well, as near as I can get at it, it is about 80 or 90 feet above and in a westerly direction from the easterly shaft-house on the Equator Lode.

(Signed) WALTER N. WEBSTER.

Subscribed and sworn to before me this 7th day of November, A. D. 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

Complainant also produced ERSKINE MCCLELLAN, of lawful age, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Erskine McClellan; age, 64 years; occupation at present, mining; and reside in Georgetown, Clear Creek County, Colorado.

Q. Were you one of the applicants for patent for the Cayuga Lode mentioned in Exhibit A?

Ans. Yes, sir.

Q. Look at the copy letter of "U. S. Land Office, Central City, Colorado, April 30th, 1873, to Erskine McClellan et al., Georgetown, Colorado, signed Samuel C. Lothrop, register, W. A. Arnold, receiver," and state whether you ever received that letter or a copy thereof, or any letter of the purport thereof, at any time; and, if so, when.

Ans. I did not receive any such letter.

773 Q. When, if ever, did you receive any information of the dismissal of said application for the Cayuga Lode by the register and receiver?

Ans. Never.

Q. Where did you reside in April, 1875?

Ans. Georgetown, Colorado.

Q. How far is Georgetown from Central City, Colorado?

Ans. About 18 miles.

Q. How frequently was there communication by mail between Central City and Georgetown in April, 1873?

Ans. Daily coach by mail.

Q. When, if at all, did you first become interested in the Cayuga Lode?

Ans. In 1870 or 1871.

Q. State who, if you know, has been in possession of that lode ever since you became interested in it.

Ans. I was one of the parties in possession of the discovery shaft, and Walter N. Webster and Joseph Rist.

Q. To about what time was Rist interested?

Ans. Rist or his widow to about 1880.

Q. What has been your business during these years, chiefly?

Ans. Mill-wrighting most of the time; of course I missed some.

Q. Are you acquainted with the value of mining property in the vicinity of Cayuga and No. 5 Lodes?

Ans. Not very well.

Q. Have you dealt in mining property in Clear Creek County? If so, state to what extent you have bought and sold mining property.

Ans. I sold one piece of property for one hundred and fifty thousand dollars; this includes only Clear Creek County. I made other sales in Clear Creek County; in Leadville and Red Cliff; also I made a sale in Gilpin County.

774 Q. From your dealing in mines have formed any opinion of the value of the land and mining ground covered by both patents of the Cayuga and No. 5 Lodes? I mean the ground in conflict between these lodes.

Ans. Yes; I have formed an opinion from what I know.

Q. What, in your opinion, is the value of the ground so in conflict?

(Defendants' counsel objects, because question is irrelevant and witness is no expert, and an interested party.)

Ans. One million dollars.

Q. Do you know George W. Hall?

Ans. Yes, sir.

Q. What, if anything, do you know of his having any knowledge, or notice, or the means of knowing of the conflict between the Cayuga and No. 5 Lodes?

(Defendants' counsel objects because irrelevant.)

Ans. I don't know, of my own knowledge, whether he had knowledge or notice.

Cross-examination:

Q. Between 1873 and 1881 where did you live?

Ans. During that period I was in Georgetown.

Q. During all this time did you not know that the defendants were working, on a large scale, the premises you now claim under the Cayuga patent?

(Complainants' counsel objects as immaterial and irrelevant.)

Ans. Yes, sir.

Q. When did you first know that the ground in controversy was patented to the Marshall Company?

Ans. I think it was 1880. I am not certain about it; Mr. Hall told me so.

Q. When did you first know that the Cayuga application had been dismissed at the land office?

Ans. I suppose that that would be 1880. I don't know when I first learned it exactly.

75 Q. Between 1873 and 1880, if you did not know it had been dismissed, why did you not press or attempt to press the Cayuga application to patent?

Ans. I did attempt to press the application to patent.

Q. How could you intelligently attempt to press it without stumbling across the fact that it had been dismissed?

Ans. My attorney at Washington could not even find out. I pressed it as hard as ever I could through my attorney, Robert Bradford.

Q. What did you employ Mr. Bradford for, and when?

Ans. I first employed him to see and report the status of the case; it cost me $500.00. I think 1874, I am not entirely certain.

Q. Did not Mr. Bradford inform you that the Marshall Company had gone to patent on this ground?

Ans. Not to my knowledge.

Q. Here for a period of 6 or 7 years you remained ignorant, while living in Georgetown, that this Cayuga ground had been patented to the Marshall Company, and during a period when its property was producing largely. The patent was on record, and the property had notoriously changed hands, and had got into the possession of the Colorado Central Company, defendant.

Ans. I don't know the number of years, but during that time I was ignorant of it. I mean of the patent.

By consent of counsel the further taking of testimony was continued until Thursday, the eighth day of November, A. D. 1883, at 9½ o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Thursday, the eighth day of November, A. D. 1883, at 9½ o'clock a. m., counsel for the respective parties being present, the witness, Erskine McClellan, in continuation of his testimony begun on yesterday, deposed and testified as follows:

Redirect examination:

76 Q. Who was your attorney, or the attorney or agent for the applicants for the Cayuga Lode, in getting up the application papers, Exhibit A?

Ans. I made bargain to get the patent with Mr. F. Brune before I got the order for the survey of the Cayuga Lode; he got up the diagram; I don't know that he made any other papers. John A. Coulter made some of the papers, I think.

Q. F. Brune, you say; what is his full name?

Ans. I don't recollect.

Q. Was it Francis F. Brune?

Ans. Yes, sir.

Q. What was his business?

Ans. Deputy United States surveyor.

Q. Who made the first discovery of mineral on the ground in conflict between No. 5 and the Cayuga? If you know, state your means of knowledge.

Ans. James W. Ames, Walter N. Webster. I was in and saw it, in a drift on the Cayuga claim.

Q. When was this mineral discovered on the ground so in controversy?

Ans. I believe in 1870.

Q. State the extent and value of mineral so discovered, and what the mineral was.

Ans. I say $700.00 at least. I could not say to a dollar money taken out. First-class $600.00 *dollars* per ton I think. Silver-bearing sulphuret ore.

Q. About when, and by what means, and who by, if at all, were the Cayuga owners dispossessed of this drift on the land in controversy?

(Defendants' counsel object because the question calls for nothing charged in the bill.)

Ans. By force of arms. By Fletcher Kelso, Henry D. Williams, and several names I can hardly tell, in the winter of 1871 and 1872.

77 Q. What, if anything, was said by the parties, or either of the parties, who so dispossessed the owners of the Cayuga as to their authority to dispossess you at the time of such dispossession?

(Defendants' counsel object for same reason last above stated.)

Ans. They said they had a lease from General Marshall. I mean Frank J. Marshall.

Q. Now, did Francis F. Brune continue to prosecute the application for patent of the Cayuga Lode? If not, state about when, if at all, he ceased to prosecute it, and whether you discharged him from the prosecution of it, or

whether he declined to further prosecute it and about what time he declined to further prosecute.

(Defendants' counsel objects because the question leads to irrelevant and impertinent matter not relied upon in the bill of complaint in this cause.)

Ans. He did not prosecute it to completion. He ceased to prosecute it about a year after it was commenced. He declined to obtain the patent, about a year after the commencement of the application.

Cross-examination:

Q. In regard to the value of the mine please state what was paid Mrs. Rist for her interest.

(Complainants' counsel objects because it is immaterial and irrelevant.)

Ans. I don't know and never did.

Q. Was Frank De La Mar attorney for the Cayuga applicants in their application for patent?

Ans. Not to my knowledge.

Q. Do you deny that he was such attorney?

Ans. He was their attorney.

Q. What do you know of "their attorney?"

Ans. Other matters aside from the patent; that is other law matters.

78 Q. Then you deny that he was the attorney for the patent?

Ans. Yes, sir.

Q. Please fix by reference to some well-known point the place where the Cayuga discovery is to be found.

Ans. I would say about 90 feet above the Equator.

Q. The Equator, as you know, has been traced for many hundred feet. Please fix a point on that lode by which to locate the Cayuga discovery.

Ans. The eastern shaft house.

Q. Where was this Cayuga drift you speak of, with reference to the Cayuga discovery shaft?

Ans. It did not start from the shaft; about 30 feet easterly.

(Signed) ERSKINE McCLELLAN.

Subscribed and sworn to before me this 8th day of November, A. D. 1880.

(Signed) JOHN W. WEBSTER,
Examiner.

Complainants also produce JOHN TURCK, a witness of lawful age, who being by me first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth, in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is John Turck; age, 57 years; occupation, mining; and reside at Georgetown, Colorado.

Q. Do you know George W. Hall, and, if so, for how long have you known him and where have you known him?

Ans. I do know him; for about 12 or 15 years, if I remember correctly; at Georgetown; I think he used to live over at Gilpin previously.

Q. Do you know the Colorado Central Consolidated Mining Company?

Ans. Yes, sir.

Q. What do you know about the connection of George W. Hall
79 with the Colorado Central Consolidated Mining Company, if anything? State fully in what capacity he has been connected with said company and for how long, and when.

Ans. He has been connected as superintendent and agent since 1879; since the company was organized.

Q. Where has he had his office as such superintendent and agent?

Ans. At Georgetown, Clear Creek County, Colorado.

Q. Where has his residence been during the time referred to?

Ans. At Georgetown.

(Signed) JOHN TURCK.

Subscribed and sworn to before me this 8th day of November, A. D. 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

Complainants also produce GEORGE W. HUNTER, a witness in its behalf, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is George W. Hunter; age, 63 years; occupation, a miner; and reside at Georgetown, Colorado.

Q. Do you know the Cayuga Lode, so called, situate in Griffith mining district, Clear Creek County, Colorado?

Ans. I became familiar with that, if my memory serves me, in August, 1867, or September of that year.

Q. What, if anything, do you know about the discovery of mineral in the shaft of that lode; if anything, state when such discovery was made, as near as you can, who the discoverers were, and your means of knowledge in that regard.

Ans. As to who first opened the hole I know not; but Mr.
80 Webster here present and a Mr. Ames—I cannot speak his given name—was working in what they deemed to be their discovery; I myself was drifting for a crevice where I supposed it to be, and being informed that they, the workers in said shaft, had struck a crevice, and being interested myself I went down into the shaft and I found a new crevice some 6 inches wide, containing some quartz and small particles of glittering ore intermixed in said quartz. I then abandoned my drifting. That is all I know about the property. This was in August or September, 1867.

Q. About what was the depth of this shaft at the bottom of which you saw the vein and mineral spoken of by you?

Ans. It looked to me some 18 or 20 feet or thereabouts in depth.

(Signed) GEORGE W. HUNTER.

Subscribed and sworn to before me this 8th day of November, A. D. 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

Complainants produced CHARLES A. MARTINE, a witness of lawful age, who being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Charles A. Martine; age, 44 years; occupation is mining, and reside at Georgetown, Colorado.

Q. Do you know George W. Hall; and, if so, where and how long have you known him?

Ans. I first became acquainted with George W. Hall in the town of Georgetown in the year 1869, and have known him ever since, in Georgetown.

Q. What do you know, if anything, with reference to the business relations between George W. Hall and Frank J. Marshall, from 1871 to 1881, or at any time between those dates, if anything; state the
81 nature of their relations in any enterprise or enterprises or business commencing with the first of their associations that year you know of, and coming down consecutively as near as you can.

(Defendants' counsel object because it is irrelevent.)

Ans. There were no business relations in the year 1871 so far as I know. On the 1st of April, 1872, a copartnership was formed between George W. Hall, Charles H. Marshall, whose interest was represented by F. J. Marshall, and myself, for the purpose of carrying on the lumber and lode buying business, which was continued up to the fall of 1879, when C. H. Marshall withdrew from the firm. The business was continued by myself and Mr. Hall up to the first of August, 1880, when I withdrew. Some time during the year 1874 or 1875 F. J. Marshall formed what was called the No. 5 Leasing or Mining Company for the purpose of developing the No. 5 Lode, in which Mr. Hall became a stockholder. Work was carried on on the No. 5 Lode for a long period, a year or so, when the company collapsed; at about the same time the Leasing Company was formed, or some time thereafter. Mr. Hall became one of the officers of the Marshall Silver Mining Company, and acted as such up to the time the officers were wound up, after its property had been transferred to the Colorado Central Consolidated Mining Company; I believe that is the title of the concern. The property was transferred towards the latter part of 1879, while the *officers* of the Marshall Silver Mining Company was not wound up until the spring or summer of 1880. What the relations of Marshall and Hall have been since that time, I don't know.

Q. What, if anything, do you know of George W. Hall's attending to the business or any of the business of the Number 5 Leasing or Mining Company?

Ans. As far as I remember now he took no active part in the management of its affairs for some time after its organization; towards the latter part of its existence he went up to the mine at various times, and
82 finally, if I am not mistaken, took charge of it.

Q. Who was president of the Marshall Silver Mining Company at the time of its organization?

Ans. F. J. Marshall.

Q. How long did he continue to act as such president?

Ans. Up to the very time its affairs were wound up.

Q. What office of the Marshall Silver Mining Company was it that George W. Hall held, or acted in, mentioned by you and what so far as you know were his duties in respect to that company?

Ans. For a year or so prior to the fall of 1879 he acted as treasurer.

Q. By what means of knowledge on your part do you say he so acted as treasurer?

Ans. My information arises from the fact that in the ore buying transactions of G. W. Hall and Company this firm frequently became indebted to the Marshall Silver Mining Company for ores delivered to them by the Marshall Silver Mining Company or their lessees. I drew checks for the amount due the Marshall Silver Mining Company, and handed them to G. W. Hall; I also frequently saw him draw checks in favor of parties who the Marshall Silver Mining Company was indebted to.

Q. How were these checks signed, if signed at all, by George W. Hall in respect to transactions of the last mentioned by you?

(Defendants' counsel objects as irrelevant and entirely outside the case.)

Ans. I believe he signed them as treasurer or secretary, but I am not certain as to that.

Q. What, if any, knowledge or information did George W. Hall have, if any, as to your knowledge about the controversy between the Cayuga and No. 5 Lodes respecting ground claimed by both?

Ans. I knew nothing about it until I heard that the Cayuga patent had been issued.

83 Q. Is the Tunnel Lode No. 5 on which No. 5 Leasing or Mining Company operated the Tunnel No. 5 Lode mentioned in the complaint in this action and adjoining the Cayuga?

Ans. I have been in and visited the underground workings of the No. 5 Lode a number of times, but as to the conflict between the surface ground of the No. 5 and that of the Cayuga, I have no knowledge excepting what is derived from an examination of the plats. I have never been on the surface myself, and I believe that the Tunnel Lode No. 5 is the same ground which the No. 5 Leasing Company operated on.

Q. You know of any other No. 5 Lode in Griffith mining district in Clear Creek County than that which the Leasing and Mining Company mentioned operated on?

Ans. In running tunnels in the vicinity of Georgetown it has been customary to number lodes as they were intersected by the tunnels. There may be other No. 5 Lodes in other Tunnels, but this is the only one I can recall at present. This Lode No. 5 was intersected by the Marshall tunnel.

Cross-examination:

Q. Were not the entire operations of this No. 5 company confined to development from the Marshall tunnel several hundred feet beneath the surface and several hundred feet below the alleged shaft and drift spoken of by the witnesses on the Cayuga Lode?

Ans. They were, as far as I know.

(Signed) CHARLES A. MARTINE.

Subscribed and sworn to before me this 8th day of November, A. D. 1883.

Signed) JOHN W. WEBSTER,
Examiner.

By consent of counsel the further taking of testimony is continued until Tuesday, the 20th day of November, A. D. 1883, at ten o'clock a.
84 m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Tuesday, the 20th day of November, A. D. 1880, at ten o'clock a. m., at my office in Denver, counsel of the respective parties being present, the further taking of testimony is continued by consent of counsel until Wednesday, the 21st day of November, A. D. 1883, at ten o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Wednesday, the 21st day of November, A. D. 1883, at ten o'clock a. m., at my office in Denver, the counsel of the respective parties being present, complainants produced FRANK DE LA MAR, a witness of lawful age, who first being by me, duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Frank De La Mar; age, 53 years; occupation, attorney at law, and reside at Chihuahua, Summit County, State of Colorado.

Q. Do you know the Cayuga Lode, so called, situate in Griffith mining district, Clear Creek County, Colorado? If so, how long have you known it?

Ans. I was acquainted with it in about the years 1872 and 1873.

Q. What, if anything, do you know of Erskine McClellan, and Walter N. Webster, and one Ames, and Joseph Rist, or either of them being dispossessed, by force or otherwise, of any on the workings of the Cayuga Lode? If anything, state the time as nearly as you can of such dispossession, the means used, and the persons by whom they were dispossessed.

(Defendants' counsel objects as irrelevant.)

Ans. There was, I forget the date, a charge against Jackson
85 Bishop for blowing rock, I think it was, into the Cayuga shaft; they claimed at the time that they couldn't work on account of this blowing rock into the shaft. I was not there myself. Mr. Rist, Mr. McClellan, James W. Ames, and Walter N. Webster were the parties at this time claiming to own the Cayuga Lode, in 1872 or 1873; I am not positive as to the date.

Q. About the time of this occurrence did you see the shaft or workings on the Cayuga, after such dispossession? If so, what indications did you see of the shaft or workings being filled or incumbered with rock blown in as aforesaid?

Ans. I saw the lead several times after that; there was some rock in the shaft, I suppose the discovery shaft; I don't recollect how much.

Q. For whom, if you know, was Jackson Bishop working at the time of the occurrence referred to by you?

Ans. Working for General Marshall, I suppose, so understood.

(Defendants' counsel object to the answer as hearsay testimony.)

Q. On what ground was he at work, and who were the claimants to it the time referred to by you?

Ans. He was at work a very short distance south of the Cayuga shaft. There were two claimants of the ground in dispute at that time. The Marshall Silver Mining Company, the parties claiming to own it, and the Cayuga Company who also claimed to own it.

(Defendant's counsel object to the answer as irrelevant and immaterial.)

Q. Who claimed the Cayuga at that time?

Ans. McClellan, Rist, Ames, and Webster.

Q. Under what name did the Marshall Silver Mining Company claim the ground where Bishop was at work, and which was in dispute between it and Webster et al.?

Ans. The Marshall Mining Company claimed it as the Square and Compass Lode.

86 Q. By what other names has the Square and Compass Lode been known since, if any, to your knowledge?

Ans. The Colorado Central Lode is on the same ground where the Square and Compass Lode used to be, or very nearly.

Q. Do you know George W. Hall, of Clear Creek County, Colorado? If so, how long have you known him, and where have you known him?

Ans. I have known him for the last 10 or 12 years, in Georgetown, Clear Creek County, Colorado.

Q. What do you know of said George W. Hall being present in court when a matter in controversy between the Marshall Silver Mining Company and Erskine McClellan et al., claimants of the Cayuga Lode was being investigated in respect to a portion of the Cayuga ground and lode, if anything? State when and whether George W. Hall was present at such investigation and controversy, and what occurred in his presence and hearing in reference thereto.

(Defendants' counsel objects because it is immaterial and irrelevant.)

Ans. My recollection is that during the trial of a motion to dissolve an injunction against the Marshall Silver Mining Company Mr. Hall was present a portion of the time; that is my recollection; how much I couldn't say; we were examining witnesses for something like half a day in regard to the Cayuga and the Square and Compass being the same lode, I believe. It involved all the Cayuga ground; that is, that portion of it embraced in the discovery and running east at least.

Q. How much of the time was said Hall present, according to your best recollection?

Ans. I could not state as to that.

Q. Where was this examination of witnesses, and when was it?

Ans. It was in Georgetown, Clear Creek County; to the best of my recollection in the winter of 1872 and 1873, before Judge Belford.

87 Q. In what business was Mr. Hall engaged in 1871, 1872, and 1873? State, if you know.

Ans. He was engaged in the lumber business, building, and I believe at that time was buying and selling ores.

Q. What do you know, if anything, of this buying ore, of Erskine McClellan et al., the products of the Cayuga Lode?

Ans. I know nothing about it, except what I was told by Mr. Ames, who is now dead.

Q. What did Mr. Ames say on this subject?

(Defendants' counsel objecta as irrelevant, immaterial, and leading to incompetent testimony, and hearsay and trifling.)

Ans. Mr. Ames told me that he had taken several sacks of ore to Martine and Hall. I don't recollect whether they were from the Senaca or Cayuga.

Q. State your best recollection as to where he said the ore was from.

Ans. I think it was from the Cayuga. The Cayuga and Senaca were all one.

(Signed) FRANK DE LA MAR.

Subscribed and sworn to before me this 21st day of November, A. D. 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

Cross-examination:

Q. What do you mean by saying that Cayuga and Senaca were all one?

Ans. There are two shafts, my recollection is, about 18 feet apart on the surface. The Cayuga pitched at a pretty sharp angle towards the Senaca. The Senaca appeared to be, to the best of my recollection, nearly vertical.

Q. Have you testified to anything in this case that has happened at any time within ten years past?

Ans. I think probably not. As to my testimony to-day, I think it is over ten years.

88 Q. What became of this old litigation, if your memory can run back that far?

(Complainants' counsel objects, as irrelevant and immaterial and not cross-examination, and incompetent.)

Ans. The injunction suit was dissolved here in the supreme court chamber in Denver, in the room where the supreme court was held before Judge Belford. The Marshall Silver Mining Company defeated us in this injunction suit.

Q. What became of the ejectment suit in aid of the injunction?

(Complainants' counsel objects, as irrelevant, immaterial, incompetent, and not cross-examination.)

Ans. I believe it was dismissed, that is my recollection, by McClellan, Webster, Ames, et al.

It is here consented by counsel for complainants that this witness may now be examined on behalf of defendant, as their witness, subject to such objection to form and substance on behalf of complainants as it may be advised.

Defendants' counsel introduce FRANK DE LA MAR, a witness on their behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. What are the names of all the lodes that were in controversy between the Cayuga parties and the Marshall Company?

(Complainant objects, as irrelevant and immaterial.)

Ans. My recollection is the Square and Compass, the Cayuga, and the Senaca were the only lodes that were mentioned in the record. I recollect of hearing the name No. 5 Tunnel Lode, but I did not know where it was.

Q. The litigation then which you mentioned in your previous examination happened prior to the location of the No. 5 Lode and was disposed of before the ground was covered by the No. 5 location?

89 Ans. The No. 5 Lode I am not clear about. The No. 5 was a location of a lode discovered in the Marshall Tunnel. I never was in the Marshall Tunnel, and could not state whether this suit was before or after the discovery of the No. 5.

Q. Were you attorney for the Cayuga Lode?

Ans. I was the attorney for the parties who owned the lode at that time, viz, McClellan, Webster, and Ames. Joseph Rist was made a party plaintiff, because he claimed to own a portion of the Cayuga and Senaca lodes. When the papers were made out and filed, Mr. Rist was not in Georgetown—I mean the injunction suit.

Q. If you as attorney at this time knew nothing of the No. 5 titles, how could Mr. Hall, if a spectator at the hearing, learn anything of the controversy between the Cayuga title and the No. 5 title?

(Complainants' counsel objects, as argumentation.)

Ans. That suit was not brought against the No. 5 title, but against the Square and Compass title. I know nothing of the No. 5 title myself, by that name.

Q. Were you aware of the application for the patent on the Cayuga, the application for patent as the No. 5, the suit brought by the Marshall Company against the Cayuga parties, and the withdrawal of the application on the Cayuga by Rist?

(Complainants' counsel object, as irrelevant and immaterial.)

Ans. I had nothing to do with those cases. I know nothing about them only what I had heard.

Q. Who did you hear it from?

(Complainants' counsel objects for same reason as last above argued.)

Ans. I heard Mr. McClellan talk about it, also I think Mr. Marshall.

Q. In what year, as near as you can state, did you hear Mr. Erskine McClellan speak of the dismissal of the suit last mentioned as the

90 withdrawal of the Cayuga application for patent?

(Complainants' counsel objects, as immaterial and irrelevant and assuming a fact not proved, that witness heard McClellan speak of the withdrawal of the application for patent on the Cayuga Lode.)

Ans. I don't recollect as I ever heard Mr. McClellan say anything about the withdrawal of the application; I was not interested in those suits, and paid no attention to them; I don't recollect I ever heard him say anything about the dismissal of that suit.

Q. Do you know whether Mr. McClellan was aware of the withdrawal of the application for patent by Rist on the Cayuga Lode? And, if yea, state your means of knowledge.

Ans. No, I don't know that I do; in regard to the application for a patent, Mr. Rist disclaimed any interest in the first suit—the injunction suit.

Q. What, if anything, do you know of Mr. McClellan being aware of

the position of the Cayuga application for patent while you lived in Georgetown?

Ans. I don't know that I know anything of it. I have no recollection of it now.

Q. Do you know of the workings on the Compass and Square, to wit, a drift running from the Compass and Square discovery shaft being proved up, or run into the workings on the Cayuga, before the year 1873?

(Complainants' counsel objects, as irrelevant, immaterial, and incompetent.)

Ans. I know there was a drift run from the discovery shaft of the Square and Compass east, but I never was in that drift that I recollect of.

Q. Were you not aware from your connection with that litigation that the Square and Compass was the oldest title; that it was proved up into the Cayuga, and that thereupon the controversy in the courts was decided adversely to the Cayuga title as you have stated?

91 (Complainants' counsel objects, as immaterial and irrelevant, incompetent, and not the best evidence, and leading.)

Ans. Independent of any suits that were pending, I know that the Square and Compass was an older record than any lode on the hill, except the Equator and the Bowman. The proofs in court must have satisfied Judge Belford, but did not satisfy me, for he dismissed the suits.

(Complainants' counsel objects to the answer as wholly immaterial, irrelevant, and incompetent, and not the best evidence.)

Q. Was the drift on the Cayuga, mentioned previously in this case by other witnesses, ever connected with the discovery shaft on the Cayuga?

(Complainants' counsel object as announcing what other witnesses have testified to.)

Ans. It was not connected, and that is the reason why the cases were dismissed.

(Signed) FRANK DE LA MAR.

Subscribed and sworn to before me this 21st day of November, A. D. 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

By consent of counsel the further taking of testimony in this cause is continued until Monday, the 26th day of November, A. D. 1883, at two o'clock p. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Monday, the 26th day of November, A. D. 1883, at two o'clock p. m., at my office in Denver, counsel for the respective parties being present, the complainant produced FRANK A. MAXWELL, a witness in its behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and

92 testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Frank A. Maxwell; age, 29 years; occupation, civil engineer, and reside at Georgetown, Colorado.

Q. Were you, in the fall of 1881, a member of the firm of Maxwell and Carpenter, having your office in Georgetown, Colorado?

Ans. I believe my partnership with Mr. Carpenter began the 29th of August, 1881, and continued until February, 1883.

Q. How long did this partnership continue?

Ans. From August 29th, 1881, until some time in February, 1883.

Q. Have you the letter of Maxwell and Carpenter, or a letter of Maxwell and Carpenter, dated September 27th, 1881, to the register and receiver of the U. S. land office, Central City, Colorado, or to the register of that office, relating to the matter of the Cayuga Lode, Erskine McClellan et al. applicants?

Ans. No, sir.

Q. Look at this paper now shown you, and state whether it refreshes your recollection in respect to the letter mentioned or referred to in the next preceding interrogatory?

Ans. No, sir; I do not have any recollection of any such letter; at that time I had been nearly a month in Middle Park and had only returned within 2 or 3 days of that time, and such a letter may have been written without my knowledge.

Q. Where would such a letter be apt to be found now, if in existence?

Ans. It would be apt to be found in the files of the land office.

Q. Did your firm keep copies of all such letters as that referred to?

Ans. No, sir.

Q. About September, 1881, was you or was your firm employed by Robert Morrison, esq., a lawyer of Georgetown, or George W. Hall, of Georgetown, to get a certificate from the register or register and re-
93 ceiver of the U. S. land office at Central City, Colorado, to any fact, and if any what fact, relating to the Cayuga Lode or application for patent thereon?

Ans. I have no recollection of any such employment.

Q. Do you recollect of any conversation in the fall of 1881 between yourself and said Robert Morrison or between yourself and said George W. Hall concerning the Cayuga Lode in Griffith mining district in Clear Creek County, Colorado, or application for patent thereon or any claim therefor. If anything, state fully and at large.

Ans. No, sir; I do not recollect of any conversation with either of those parties.

Q. Did you, about the time last above referred to, have any connection with said Morrison and Hall or either of them in regard to the Tunnel Lode, or any conflict between that lode and the Cayuga Lode? If any, state fully and at large.

Ans. No, sir.

(Signed) FRANK A. MAXWELL.

Subscribed and sworn to before me this 26th day of November, A. D. 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

(Counsel for defendants objects to the foregoing testimony for the reason that it does not touch any issue of this case, and is wholly irrelevant and incompetent.)

By consent of counsel the further taking of testimony was continued until Tuesday, the 27th day of November, A. D. 1883, at two o'clock p. m., at my office in the city of Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Tuesday, the 27th day of November, A. D. 1883, at two o'clock p. m., at my office in Den-
94 ver, counsel for the respective parties being present, the complainant produced EDWARD ROLLANDET, a witness of lawful age, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Edward Rollandet; age, 31 years; occupation, chief draftsman in the surveyor-general's office, Colorado; and reside in Denver, Arapahoe County, Colorado.

Q. Witness is here shown Exhibit B, being copy of patent on Tunnel Lode No. 5. (Produces a plat.) What does this plat produced by you represent, and what was it made from?

Ans. It represents the boundaries of the Tunnel No. 5 Lode in accordance with the description of the same in the patent, and gives further intersection with the Cayuga Lode, survey No. 231. It was made from a description of the claim as given in the patent proper.

(Signed) EDWARD ROLLANDET.

Subscribed and sworn to before me this 27th day of November, A. D. 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

(Complainants' counsel now offers in evidence the plat mentioned by last witness, which is marked Exhibit E and hereto attached, as a part of the testimony in this cause.

To which the counsel for defendants object, for the reason that it is immaterial and irrelevant, and besides incorrect, and is offered not as a plat, but, secondarily, to prove a recital in a patent.)

Complainant now produces EDWARD J. BROOKS, a witness in its behalf, who, being by me first duly cautioned and sworn to testify
95 the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Edward J. Brooks; age, 53 years; chief clerk in the office of the surveyor-general of the State of Colorado; and reside in Denver, Arapahoe County, Colorado.

Q. As such chief clerk, have you the general charge of the books, papers, and documents connected with that office?

Ans. I have.

Q. Look at the paper now shown you and state whether it is from the files kept in said office?

Ans. It is.

Q. Look at the paper now shown you and state whether the same is a true copy of the paper mentioned by you in your last answer or referred to therein?

Ans. It is a true and correct copy.

(The signature to the said paper produced by this witness from the files of said office is admitted by defendants' counsel to be the signature of Frank J. Marshall.

The copy thereof mentioned by witness is now offered in evidence, and marked Exhibit F and hereto attached, as a part of this testimony.)

Q. Look at this other paper now shown you and state whether it is from the files kept in said office.

Ans. It is.

(The signature to the said paper last mentioned is admitted by defendants' counsel to be the signature of Frank J. Marshall.)

Q. Is the paper now shown you a true copy of the paper last shown you and mentioned in your last answer or referred to therein?

Ans. It is.

96 (Said copy is now offered in evidence, and marked Exhibit G, and hereto attached, and made a part of the testimony in this cause.)

Q. Look at this other paper now shown you and state whether the same is from the files of said office.

Ans. It is.

(The signatures to the said paper last mentioned are admitted by defendants' counsel to be the signatures of the register and receiver which they purport to be.)

Q. State whether the paper now shown you is a true copy of the last-mentioned paper as being from the files of said office.

Ans. It is.

(Complainants' counsel now offers in evidence this paper, which is marked Exhibit H and hereto attached, and made a part of the testimony in this cause.)

Q. What is the book now produced by you, and where is it produced from?

Ans. It is a bound volume of the field-notes of mining claims surveyed during the year 1872 in the district of Colorado, and is a part of the records of the office of the surveyor-general.

Q. Does it contain the field-notes of the original survey of the claim on said Tunnel Lode No. 5, claim of the Marshall Silver Mining Company?

Ans. It does.

Q. Is this paper now shown you a true copy of the last-mentioned field-notes?

Ans. It is.

(Complainants' counsel now offers in evidence the last-mentioned copy, which is marked Exhibit I and is hereto attached, and made a part of the testimony in this cause.)

Q. What book is this now produced by you, and what is it?

Ans. It is a bound volume of mining surveys in Colorado in 1872.

Q. Does it contain a plat according to the field-notes before

97 mentioned of the original survey of the said Tunnel Lode No. 5?

Ans. It does.

Q. State whether this paper now shown you is a true copy of the last-mentioned plat?

Ans. It is.

(Said last-mentioned copy plat is now offered in evidence, and marked Exhibit J and hereto attached, and made a part of the testimony herein.)

Q. What book is that which you now produce, and what does it contain?

Ans. It is a bound volume, letter N, and is field-notes of mining claims surveyed in 1873 in the district of Colorado.

Q. What notes, if any, does it contain of or respecting said Tunnel Lode No. 5?

Ans. It contains the amended field-notes of the survey of the Tunnel Lode No. 5.

Q. What order, if any, of the surveyor-general of the district of Colorado was there for such amended survey?

Ans. None can be found of record.

Q. What approval by the surveyor-general of the district of Colorado of said amended field-notes of survey, if any, do the records of the surveyor-general's office show?

Ans. They don't show any proof.

Q. At what date do the amended field-notes, as they appear in the volume which you produce, appear to have been seen to by the deputy who made them?

Ans. The 19th day of May, 1873.

Q. What is the rule or regulation, if any, in respect to deputy surveyors in this district having authority from the surveyor-general in making surveys of this sort before making them, and what was the rule or practice in this district in respect to such authority before surveys
98 made by deputys, at the time when the amended notes in question purport to have been made, or about that time, or previously thereto?

(Defendants' counsel objects; it is incompetent so far as it calls for the usage of the office since the year 1873, and it does not appear that the witness was at that time conversant with the rule.)

Ans. The rules since I have been connected with the office, September, 1878, have been to issue an order for an amended survey, in every instance requiring claimants to deposit an additional sum sufficient to cover the cost of the office work; prior to my connection with the office in 1878 I have no knowledge of the rules in such cases.

Cross-examination:

Q. You say you find no order for an amended survey of the No. 5 Lode, nor any approval thereof. Do you not find those field-notes of that amended survey in their proper place bound with other field-notes among the records of the office for the year 1873?

Ans. I do.

Q. Accompanying these amended field-notes do you not find a plat corresponding with the same with the signature and approval of the surveyor-general at that time?

Ans. I do.

Q. Are there not other instances of amended surveys made about that

time in which you fail to find any order or approval by the surveyor-general?

Ans. There are other instances.

Q. Is there any essential difference between the original survey or field-notes of the No. 5 Lode and the amended survey and field-notes, except that the latter shows itself clear of the Cayuga ground and purport to cover the space vacated by the cancellation of the Cayuga survey?

99 (Complainants' counsel objects that the question calls for the conclusion of the witness in respect to what the surveys show, which will appear, and does appear, from an inspection of the notes themselves, and assumes that there was a cancellation of the Cayuga claim for patent which was not the fact, and as irrelevant and immaterial, and the witness can only state his answer to this question by careful inspection of the notes of both surveys.)

Ans. Without a careful and critical examination I am unable to state what essential difference, if any there be, exists between the two surveys beyond the fact that the original survey of the Tunnel No. 5 Lode contains an area of $\frac{45}{100}$ths of an acre and the amended survey contains an area of (1 & $\frac{9}{100}$ths) one and nine one-hundredths acres.

Q. The extreme lines in both instances are identical, are they not?

Ans. I judge them to be so.

Q. Do you not find that prior to the date of the verification of the amended field-notes, May 19th, 1873, by the records of your office the Cayuga survey had been previously vacated, to wit, on the 12th day of May, 1873, by an entry on the margin in the proper place, open to general inspection?

(Complainants' counsel objects, because the surveyor-general has not power to cancel an application under the law, nor has the register and receiver such power, nor had they or any or either of them such power to cancel the application for the patent on the Cayuga Lode, and if any such purported cancellation appears it must be shown by the record.)

Ans. I find upon the margin of the plat of survey No. 231, the Cayuga Lode, the words and figures following to wit, "Cancelled May 12th, 1873." I also find a pencil line drawn through said words and figures and the word "patented" in pencil written above.

Q. When was that line drawn and writing above made, if you know?

100 Ans. I do not know.

Q. The memoranda that the Cayuga survey was cancelled, are they not also written in the index opposite the name of the Cayuga Lode?

(Defendants' counsel objects for same reason last above assigned.)

Ans. To the best of my recollection they were; I have not the book before me.

Q. Do you know the handwriting in which these memoranda of cancellation are written?

Ans. I do not.

Q. Do you find among your records what is called a connected plat showing all the approved surveys in any particular section—governmental section?

Ans. I do.

Q. When a survey is cancelled is such cancellation indicated on such corrected plat?

(Complainants' counsel objects, because it is immaterial and irrelevant, and for reasons last above assigned.)

Ans. I think not.

Q. To shorten cross-examination we will ask whether you have made a special examination of the corrected plat with reference to the status of the surveys 231 and 247, since 1873?

Ans. I have not.

Q. Witness is here shown transcript of amended field-notes of the No. 5 Lode, contained in Exhibit C, which purports to be a copy of the papers filed in this application at Washington, and is asked to state whether or not they purport to contain the approval of W. H. Lessig, the then surveyor-general of Colorado.

(Complainant's counsel object on the ground that the papers are the best evidence of what they purport to show.)

101 Ans. The certificate is in the usual form and bears the name of the then surveyor-general, May 20th, 1873.

Q. Has not the Cayuga No. 231 been ignored in the approval of subsequent surveys over the same ground since May 12th, 1873, as if it had never been made so, or to allow subsequent surveys to include the area, with the exception, perhaps, of calling for it as a monument until some time in the year 1881, at least?

(Complainants' counsel objects to question as incompetent, irrelevant, and improper, and as calling for the witness' conclusion in respect to matters which can only be shown by records.)

Ans. I think it so appears of record, but I am unable to answer positively without examining the records.

Re-examination:

Q. Do you mean to be understood by your answer to the last question that more than one survey has been made over the ground included in the survey for the Cayuga Lode since the time referred to in that question?

Ans. I have no personal knowledge of the approval of any survey of the Cayuga ground, except that of Tunnel No. 5, and it was to that my answer was intended to apply.

Q. As a matter of fact is there any record outside of the marginal notes referred to by you in the surveyor-general's office showing that either said Cayuga survey or application for patent had ever been cancelled?

Ans. Nothing; there is no record that can be found except the marginal notes referred to, and the letter from the register and receiver of the land office dated May 12, 1873, which is in evidence.

Q. Are the marginal notes referred to by you as indicating a memorandum of cancellation signed by any person; and, if so, by whom do they purport to be signed?

102 Ans. Neither of them have any signature.

Q. Do you know, or is there anything to show on the plat and index mentioned by you, when the memoranda of cancellation or either of them were made?

Ans. The memoranda in the index bear date of May 12th, 1873, and records as follows: "Cancelled May 12th, 1873 letter 2029," being the

letter from the register and receiver of May 12th, 1873, a copy of which is in evidence; I have stated here too far the date on the plat.

Q. By what authority, if any, are surveys approved for application for patent, cancelled in the surveyor-general's office after they have been approved and upon which an application for patent has been made?

(Defendants' counsel object, for the reason that this question is irrelevant, and not directed to the custom or rules of the surveyor-general's office at the date and prior to the date of May, 1873.)

Ans. The rules since my connection with the office, September, 1878, have been that such surveys could only be cancelled by authority from the Commissioner of the General Land Office.

(Signed) EDWARD J. BROOKS.

Subscribed and sworn to before me this 27th day of November, A. D. 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

By consent of counsel, the further taking of testimony is continued until Wednesday, the 28th day of November, A. D. 1883, at 9 o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Wednesday, the 28th day of November, A. D. 1883, at 9 o'clock a. m., at my office in Denver,
103 the counsel for the respective parties being present.

Complainant now produces JOSEPH TYSSOWSKI, a witness, of lawful age, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age occupation, and place of residence.

Ans. My name is Joseph Tyssowski; age, 33 years; occupation, chief of the mineral division of the General Land Office of the Interior Department, Washington, D. C., and resides in Washington, D. C.

Q. What experience have you had in the General Land Office of the United States in the division having charge of claims for mineral patents, and for how long a time have you been employed in that office?

Ans. I have been employed in the mineral division about two years; prior to that time I had practiced continually for eleven years as an attorney at law, my practice being almost exclusively before the General Land Office and Interior Department proper. During that time my practice extended to cases before the mineral and other divisions of the office.

Q. In the course of your practice and employment mentioned by you, state to what extent you have become acquainted with the rules and practices of that office in respect to applications for mineral patents.

(Defendants' counsel object, for the reason that all such rules and regulations should have been properly adopted, and generally made known in circulars or otherwise for the information of the public at large, and unless so made, would have no effect or force beyond the limits of the Department itself in Washington, and if so made and promulgated, should be presented here, properly verified, and offered in evidence.)

Ans. During the time of my practice I familiarized myself generally with the rules and regulations of the office, and on particular points as cases arose in which I was engaged; but during the time I have
104 been chief of the mineral division I have familiarized myself with the rules and regulations of the affairs pertaining to ex parte mineral entries and contests before that division. As chief of the mineral division, which position I have held nearly a year, I am required and have to pass upon questions and points arising under most every branch of the mineral laws from day to day as they arise in ex parte and contested cases, and am thoroughly familiar with the rules and regulations of the office in mining cases. In disposing of questions that come before me I have also become acquainted with the practice and rules and regulations of the office extending back a long period of years prior to my appointment.

Q. In the ordinary course of business, should the original plat and field-notes of which Exhibits I and J are copies, now shown to you, have been transmitted with the application papers for patent on Tunnel Lode No. 5 to the General Land Office?

Ans. Assuming this to be the plat, Exhibit J, which was posted upon the claim, a copy thereof should have been transmitted to the General Land Office, with the application accompanied by the field-notes of that survey.

Q. What effect, if any, in the ordinary course of business in the General Land Office, would the transmittal of such original plats and field-notes, with amended field-notes, appearing in Exhibit C, have had upon the issuance of patent, passing for patent in your office of the application for patent on said Tunnel Lode No. 5?

(Defendants' counsel objects because it calls for a guess at what a judicial decision would have been 2nd, it is not based upon an irregularity set forth in the complaint; 3rd, the witness don't know what it would have been; 4th, from his previous answer he was not then, in 1873, an expert
105 in mining law. Witness compares the amended notes and the original notes with U. S. district attorney, reading same, and says:)

Ans. Confining my answers exclusively to the question of survey, the transmittal of such original survey and plat would have operated to suspend the issuance of patent in the case upon the amended survey.

Q. Why?

(Defendants' counsel objects for same reason last above assigned.)

Ans. First, the original survey covers but ($\frac{45}{100}$ths) one hundredths of an acre, whereas the amended notes show a survey covering ($1\frac{9}{100}$ths) one and nine one-hundredths acres.

Second. The plat of original survey shows an exclusion of the ground in conflict, covered by survey lot No. 231 of the Cayuga Lode claim.

Third. The amended survey having been made subsequent to the expiration of the statistory period of publication of the Tunnel Lode No. 5 application, and covering more ground and other ground than that embraced in the original survey, and no publication and posting of notices covering the ground so additionally included appearing ever to have been made, would have operated to prevent the issuance of patent to Tunnel Lode No. 5 claimants for such additional ground and upon such amended survey.

Q. In your "second" subdivision of your answer to the last preceding question, you say the plat of original survey shows an exclusion of the ground in conflict covered by survey lot No. 231 of the Cayuga Lode claim. Please now state whether the said amended notes of survey on Tunnel Lode No. 5 include the ground so excluded from the original plat, or plat of original survey.

Ans. The field notes of the amended survey appears to include the entire area of $1\frac{9}{100}$ acres, and no exclusion such as appears in the original plat is indicated.

Q. What does that portion of the plat, Exhibit J, shaded, indi-
106 cate by such shading?

Ans. The yellow coloring upon the plat would ordinarily indicate, the entire surface claimed by applicants for patent.

Q. In what respect, if at all, does the text of patent Exhibit D differ in description from the plat on said exhibit?

Ans. The descriptive written part of the patent differs from the Plat D, also forming a part of the patent in this: the said plat itself does not indicate the points of intersection with the lines of survey No. 231 of the Cayuga Lode claim, specifically referred to in the descriptive portion before referred to, of the patent; the following descriptions in said written descriptive portion are not represented upon said plat, to wit: "Thirty-three (33) feet to southerly boundary of survey No. 144, made for the claim of Erskine McClellan et al. upon the Cayuga Lode." Also "northerly boundary of said survey No. 231;" also "to northerly boundary of said survey No. 231;" also "thence south fifty (50) degrees north five hundred and ninety (590) feet, to northerly boundary of said survey No. 231."

Q. Look at paper endorsed "Tunnel Lode No. 5, Marshall Silver Mining Company, proof of posting plat and notice," contained in Exhibit C, and state what indications, if any, there are, on the plat therein, that survey lot 231 is excluded from the claim, notice of which said plat purports to form a part.

Ans. The indications upon said plat of the exclusion of the ground in conflict with survey lot No. 231, are that where the limits of survey 247 of the Tunnel Lode No. 5 crossed the ground of said survey 231, the lines are dotted and not a solid line; all that portion of survey 247 not in conflict with survey 231 is within solid lines.

Q. What indications are there, if any, under said plat written, that survey lot No. 231 is excluded from the claim, notice of which is purported to be given by the plat and text together?

107 Answer. The written portion of the notice states that the area claimed as indicated in said plat covers but forty-five one-hundredths $(\frac{45}{100})$ of an acre, whereas a figure of the slope and size indicated in the plat would cover more than twice that amount of ground, if no exclusion was made.

Q. Look at copy letter in Exhibit A, "U. S. Land Office, Central City, Colorado, April 30th, 1873, Erskine McClellan et al.," signed by the register and receiver; read the paper and state whether there was any power or authority in the register and receiver upon the facts purported to be recited in said letter to decide that the application therein referred to was null and void to your knowledge or belief under the rules and regulations or decisions of the General Land Office or Department of the Interior.

(Defendants' counsel objects because it calls for a legal opinion upon past

judicial action not appealed from; and further, it calls for present usage and not for the usage in 1873, and for the further reason that the powers and duties of the registers and receivers of the United States land office are limited and regulated by the laws of Congress and by the rules and regulations and instructions based upon and in conformity with said laws of Congress, and if there be any usurpation or wrongful exercise of any power whatever committed to them officially, the laws of Congress alone, and such rules, regulations, and restrictions as aforesaid, properly issued by the Secretary of the Interior or the Commissioner of the General Land Office, constitute the only proper evidence to be given in this cause to show a violation of the duties and powers of the said officers in their official action, and the opinions of no persons whatsoever is competent evidence of such infraction or usurpation.)

108 Ans. Under the law and the rules and regulations of the General Land Office based thereon, an application for a patent for a mining claim is an appropriation of the land covered thereby, and I know of no law or rule or regulation of the office or Department ever existing, or of any practice that ever pertained to such cases, which would give the register and receiver the power or authority to set aside or declare null and void the application referred to in said letter of April 30th, 1873.

Q. What book is this now here produced marked on the back Vol. 10?

Ans. It is a volume of bound official plats of patented mining claims, and is a part of the records of the General Land Office of the Interior Department.

Q. Turn to the plats of said Tunnel Lode No. 5 and Tunnel Lode No. 6, if in said book they are contained, and state where they are in said book

Ans. They are found on pages marked 65 and 66.

Q. Are you able to state whether those two claims, or papers for those two claims, or application for patent thereof, were transmitted together to the General Land Office, and, if so, at what time were they so transmitted, and what is your means of knowledge of this subject?

Ans. Well, these two plats of amended surveys of the Tunnel Lode No. 5 and 6 claims, appearing in the regular bound volume of the patented plats, would indicate that they were forwarded to the General Land Office with the applications for patents for these two claims; and furthermore, the fact that the field-notes of the amended survey are a part of the papers filed with the application in these cases would indicate that these plats and the field-notes thereof were forwarded to the office as a part thereof, and with said two applications.

Q. What peculiarity, if any, do you observe in the certificates of the surveyor-general upon the plats of these two claims as they appear in said volume as differing from other certificates to other plats from the surveyor-general's office of Colorado, signed by W. H. Lessig, surveyor-

109 general?

(Defendants' counsel, objects for the reason that no irregular discharges of his duties by the surveyor-general can affect the defendants in this cause, and for the further reason that there is nothing in the complaint filed in this cause to warrant the introduction of such testimony herein, there being no charge of fraud upon the part of said surveyor-general in the discharge of his duties as such in said bill contained.)

Ans. The certificates upon these plats are not engrossed or printed on

the paper upon which these plats have been made, but a printed slip filled out in writing appears pasted upon each of these plats. This pasted certificate in each case bears date May 20th, 1873, whereas in the same volume of bound plats certificates attached to other surveys therein, signed by the surveyor-general of Colorado, said certificates bearing date prior to, and subsequent to, May 20th, 1872, are engrossed or printed upon the paper or material upon which the plats are made. I do not find any other plat in this bound volume of plats upon which the name of the surveyor-general of Colorado is written upon a certificate that has been pasted upon any other plat. Upon said plat of Tunnel Lode 5 and 6 the entire certificate, including the name of the surveyor-general, is pasted upon each of the plats.

Q. By holding these pasted certificates to the light, what, if anything, can you distinguish under them?

Ans. Under the certificate on plat of Tunnel Lode No. 5, and appearing to be upon the paper upon which the plat has been made, appears to be a printed form of certificate substantially in form and shape of print with the pasted certificate thereon. I also discover written upon this covered form, and in the blank spaces left for that purpose, the words "Marshall Silver Mining Company;" also "Tunnel Lode No. 5;" the word "amended" also appears on the covered certificate after the word "the" and be-
110 fore the words "field-notes of the," and appears to have been interlined so it reads "the amended field-notes of the." This covered certificate or form does not appear to have any date, nor is the name of the surveyor-general attached thereto. The printed form of this covered certificate appears to begin and end in the same relative positions as the pasted certificates thereon and to all appearances, as well as I can read the same, it is the same printed form as that used in pasted certificate covering the same. The printed line' in the pasted certificate all through correspond with the printed form underneath and covered by the pasted certificate, including the bracket opposite the date and the dotted lines under the surveyor-general's name. They appear to be identical in form; precisely the same facts and condition of things appears as to the pasted certificate and the certificate upon plat of Tunnel Lode No. 6 in this volume.

Q. How many other certificates signed by the name of the same surveyor-general whose name appears to said surveys Nos. 5 and 6 appear in this volume, and which are printed and signed upon the paper or material upon which the plat is made?

Ans. Sixteen.

Q. You have stated in answer to a former question in substance that no copy of the field notes of the original survey and plat had been sent up to the General Land Office. What did you mean by such answer?

Ans. I mean that no plat or field-notes of the original survey bearing the approval of the Surveyor-General of the United States, and such as are usually sent up in application for patents, had ever been forwarded.

Q. Look at Exhibits A and B and state why in the usual course of business in the General Land Office, patent was issued on the Cayuga Lode, including land already patented, if you can.

111 (Defendants' counsel objects because it calls for an opinion of the witness, and is irrelevant.)

Ans. I cannot state positively why it was issued, but the record in Ex-

hibit A, disclosing the fact that the suit on the adverse claim filed by the Marshall Silver Mining Company had been dismissed and the plat of the survey of the Cayuga claim showing no conflict with Tunnel Lode claim No. 5, survey 247, and hence not indicating the land patented in that survey, no objection to the issue of the Cayuga patent in this respect appeared.

Q. Do you know of any other matter or thing which can tend to the benefit or advantage of the complainant in this cause and material thereto, which you now recollect? If so, state the same fully and at large, as if particularly interrogated thereto.

Ans. There are a number of objections disclosed by the records and papers in the Tunnel Lode No. 5 application, which should have operated to prevent the issuance of that patent. Some of these objections are as follows: The certificate of the United States Surveyor-General, attached to the amended plat of survey, does not show the $500 *dollar* expenditure therein referred to as having been made by applicant or its grantors, as required by the act of May 10th, 1872. Another important omission and defect in said application is in the fact that neither the original plat nor field-notes of original survey, such as is usually sent with mineral application, are in the files of the General Land Office, and it does not appear that either said plat or field-notes of original survey were ever reported to the General Land Office in the manner usual in such cases.

Third. The plat of original survey does not embrace the ground in conflict with the Cayuga claim. This is shown by the plat and notice posted upon the claim, and notice for application for patent published in the newspaper which calls for but forty-five hundredths ($\frac{45}{100}$) of an acre.

Fourth. The Marshall Silver Mining Company did not make its entry based upon the original survey, application, and notices. The record shows this.

112 Fifth. The entry of the land in the amended survey, and not included in the application and notices, were made without any further compliance with the statutory requirements as to notice.

Sixth. The only application as filed by the Marshall Silver Mining Company, or this ground covers, but an area of forty-five hundredths ($\frac{45}{100}$) of an acre, whereas the entry is for one and nine one-hundredths ($1\frac{9}{100}$) acres, including land never applied for, never covered by published nor any form of notice required by the statute.

Seventh. That the Marshall Silver Mining Company did not claim the land in conflict in its application for patent; and that it was claimed by the Cayuga claimants, and that claim known to the Marshall Silver Mining Company, is evident from the fact that said company filed an adverse claim against the said Cayuga claimants.

Eighth. The statutory period of publication of the Tunnel Lode No. 5 application had expired before the survey of Tunnel Lode 5 claim was made.

Ninth. No authority appears under which the amended survey was made, as far as disclosed by the papers in the case in the files of the General Land Office.

Tenth. The Tunnel Lode 5 application for patent was posted in December, 1872, the posting and other notices showing the exclusion of the ground in conflict with the Cayuga survey, but the amended survey was not made until May, 1873.

Eleventh. The amended survey covered more than twice the land applied for, and claimed in the published notice.

Twelfth. No publication, as far as disclosed by the records of the General Land Office, or posting of notice, appears ever to have been made after the amended survey and covering the additional ground subsequently included in the amended survey.

(Defendants' counsel objects to the answer of witness as a mere legal argument, and a very good one, and incompetent.)

113 Cross-examination:

Q. To what extent have you been employed in examining into this case in Washington before and since this suit was brought?

Ans. My first connection with this case was to make an examination of the papers two days before I started for Denver to attend this examination.

Q. How long have you been employed in the mineral bureau?

Ans. A little over two years.

Q. Have not the rules been revised and the Land Office practice altered in many particulars since 1873?

Ans. Yes, but I know of no change in the practice, rules, or regulations of the office which would permit an applicant for patent to make entry of land under the conditions and circumstances existing in this case. I know of no rule or regulation of the office under which an applicant has ever been permitted to dispense with the publication and notices required by the statute, or to make entry of land not included in or covered by such notices.

(Defendants' counsel objects to the answer as impertinent to the question, and giving a legal opinion not asked for.)

Q. Are you an attorney at law?

Ans. I am, but not practicing at present.

Q. Please remember the fact in answering this question that in this case you are a witness and not an attorney, and then tell us what was the consideration paid on the entry of No. 5 Lode, according to the original receiver's receipt in your possession.

(Complainants' counsel objects to the preface of this question as impertinent.)

Ans. The receiver's receipt shows the payment of $10.00.

Q. What was the Government price per acre at that time?

Ans. Five dollars ($5.00).

114 Q. How many acres then did the applicant pay for, less than one or more than one?

Ans. It shows a payment of an acre and a fraction of an acre.

Q. Then upon the transmission of this paper to the General Land Office did it not appear that applicant claimed something more than the $\frac{45}{100}$ one-hundredths of an acre mentioned in the original notices?

Ans. This particular paper, the receiver's receipt, does show that he entered more than $\frac{45}{100}$ths of an acre; but all the papers sent up with the application constitute the application in the case, and show a discrepancy between this receipt and the application, both as to quantity and ground claimed.

Q. Do you not also find among the Tunnel Lode No. 5 papers what purpurported to be the amended plat which calls for an acre and nine one-hundredths ($1\frac{9}{100}$)?

Ans. No, sir; the plat referred to is in the bound volume, 10; but I presume it was sent up with the original papers.

Q. Do you not also find amended field-notes which also call for $1\frac{9}{100}$ one-hundredths acres, or for lines which would give that in area?

Ans. I do find with the papers the field-notes of the amended survey, which state that the survey covers $1\frac{9}{100}$ one-hundredths acres, but I see there is no mark upon said field-notes stating when they were forwarded to the office.

Q. As the patent dated June 8th, 1874, conforms to said field-notes they must have been on file prior to that date, must they not?

Ans. I presume they were.

Q. Do you not also find among those papers the plat of the original survey on the No. 5 lode, or a transcript thereof, which, compared with the amended plat, shows that between the time of making the original plat there had been a change by which survey No. 231 had been excluded from said amended survey?

115 Ans. I can answer that question by stating that I do find as a part of the proof of posting plat and notice a copy of a plat which is certified as a true copy of a plat approved by the surveyor-general of Colorado. This certificate is dated December 12th, 1872. Upon this plat the lines of the survey, wherever crossing survey 231, appears to be dotted. The plat of the amended survey has no such dotted lines, and does not represent any exclusion of the ground in conflict with survey 231.

Q. Then by comparison of the two plats it is apparent, is it not, that the original excludes survey 231 from its area, and the amendment includes it, or purports to include it?

Ans. Yes, sir.

Q. Among the No. 5 papers do you not also find one entitled Application to purchase, in which the applicant states the intention to purchase the full area of one acre and nine one-hundredths ($1\frac{9}{100}$)?

Ans. I do find a paper entitled "Application to purchase," dated June 2nd, 1873. This is not the application for patent. This application to purchase describes a claim covering one and nine one-hundredths acres.

Q. Do you not also find among said No. 5 papers a paper entitled Registerer's final certificate of entry, in which the register certifies that the applicant has purchased Tunnel Lode No. 5, survey No. 247, with an area of 1 and $\frac{9}{100}$ one-hundredths acres?

Ans. I do.

By consent of counsel the further taking of testimony is continued until Saturday, the 1st day of December, A. D. 1883, at ten o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance this Saturday, the 1st day of December, A. D. 1883, at ten o'clock a. m., at my office in Denver, counsel for the respective parties being present, JOSEPH TYSSOWSKI, a wit-

116 ness on behalf of complainant, in continuation of his testimony on cross-examination, deposed and testified as follows:

Q. Did not the papers you have mentioned, taken together, show on their face that survey No. 231 had been originally excluded from the No.

5 claim, and after included therein before entry of No. 5 Lode in the local land office?

Ans. I cannot answer that question unless you specify particularly what papers you refer to.

Q. I refer to the papers mentioned on cross-examination, the receiver's receipt, certificate of entry, the amended field-notes, and the plat accompanying proof of posting?

Ans. The plat posted on the claim does show an exclusion of survey 231, the amended field-notes of May 20th, 1873, the certificate of entry, and receiver's receipt cover the entire area of one and nine one-hundredths ($1\frac{9}{100}$) acres.

Q. Is it not apparent from an examination of all those papers that this excess, $\frac{64}{100}$ acres, came from the Cayuga survey?

Ans. I believe the excess entered does cover that part of the Cayuga claim excluded from the Tunnel 5 application, and in conflict therewith.

Q. Is not the amended plat of No. 5 Lode, brought by you from Washington, superscribed with the word "amended" on its face in various places?

Ans. I find the word "amended" on said plat in one place only, to wit, before the words "survey No. 247." The word amended is also interlined in the printed certificate on said plat.

Q. By comparing the plat with the papers accompanying it, is it not evident that the amendment refers to the lines or area of the Cayuga Lode?

Ans. From my examination of the papers it appears that this amended plat does include that part of the Cayuga claim 231 excluded in
117 the Tunnel 5 application for patent.

Q. If from all these papers and map it was apparent that the Cayuga Lode had been originally excluded from the No. 5 application, and that the area had been afterwards, but before entry, included therein, and this fact did not operate to suspend the issuance of the patent for No. 5, why would the filing of the original field-notes have operated to suspend the issuance of patent?

Ans. Because the filing of such notes of original survey would have clearly indicated the discrepancy existing between the land claimed in the original application for patent and the land actually entered.

Q. Do you mean to say that the discrepancy you speak of was not clearly indicated by other papers and maps without the aid of the original field-notes?

Ans. The discrepancy is indicated, but not as clearly as it would have been if the field-notes and plat of original survey had been properly filed in the General Land Office.

Q. In the various irregularities stated by you in the issuance of this No. 5 patent, which, if any of them, are the acts of the applicant, and which are chargeable to the acts of the deputy surveyor, surveyor-general, local land office, or General Land Office?

Ans. I do not know who is responsible for the failure to forward to the General Land Office the plat and field-notes of the original survey, or how this was accomplished, nor do I know by what authority the amended survey was made. I think the applicant for patent is clearly responsible for not having posted upon the claim a proper notice showing that he claimed

the ground in conflict with the Cayuga claim, and also for not procuring a proper publication of notice covering all the ground entered by him. I refer to the proper notices of application for patent required by statutes.

118 The applicant for patent for Tunnel Lode No. 5 claim is clearly responsible for applying to purchase land not embraced in its application for patent and notices; also, for entering more land than it ever applied for in its application for patent; also, for entering land for which it had filed an adverse claim, without having obtained a judgement in its favor; also, for procuring an amendment of its original survey after the statutory period for publication had expired, if such amendment was made under its direction; also, in not complying with the statutory requirements as to notice as to all the land included in its entry.

Q. In stating that the applicant is responsible for the newspaper publication, you have forgotten, if you ever knew, that by section 2325 Revised Statutes of the United States, then in force, it is made the duty of the register to publish such notice, have you not?

Ans. I have not. The application filed is what the register has to deal with under the law.

Q. You find no irregularities which in your judgment are chargeable to Government or its officers?

Ans. I have not so stated.

Q. How could the applicant make an unlawful entry or procure an illegal amended survey without the action of the local land office, of the surveyor-general, or at least of his deputy, or all of them?

Ans. I should say that upon the facts disclosed by the record in this case the entry should not have been allowed by the register and receiver, and I do not know why they allowed it. I know nothing about the case outside of the record.

Q. Would it not have been a physical impossibility to make the entry without consent of the register and receiver?

Ans. The entry was evidently made with their consent, but how that consent was procured I do not know, nor upon what authority the entry was allowed.

119 Q. You say the surveyor-general in his certificate certifies as to the $500.00 *dollars* labor, but does not certify that it was done by the applicant or his grantors; I ask you if that is not the formula thus in use upon the printed blanks signed by the said surveyor-general?

Ans. I do find a similar omission in several certificates on the plats in bound volume 10, before referred to.

Q. In your judgement is the applicant responsible for that irregularity?

Ans. Not necessarily.

Q. After all has been done in the way of filing maps and papers in the local land office, publishing notices, &c., is not the matter presented to the General Land Office, at Washington, with the formula that a patent shall issue "if all be found regular?"

Ans. Such statement does appear in the final certificate of entry in the usual form.

Q. Were not all the acts which you say it was the duty of the applicant for the patent for said tunnel lode to do and perform matters of fact which it was the duty of the officers of the local land office to examine,

investigate, and pass upon officially before they allowed a receiver's receipt to issue?

Ans. I believe under the practice at that time they should have been satisfied from the record before them that applicant was prima facie entitled to make entry.

Q. What was the date of the first ruling of the Department in mineral cases restricting the power of the surveyor-general's officers to allow amended surveys?

Ans. I do not know.

Q. Was it made before or since the year 1873?

Ans. I do not know, nor do I know what particular restriction you refer to.

Q. What is the status of a cancelled mineral survey in the surveyor-general's office towards other applications covering portions of the same area?

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Ans. A record of a survey in the surveyor-general's office and for which no application for patent has been made is one thing, but an application for patent is another. When the application for patent has been set aside or cancelled by authority of the Commissioner of the General Land Office or Secretary of the Interior, of course that survey and application so cancelled ceases to be an appropriation of the land.

Q. Do any surveys appear in the surveyor-general's office of mineral lots, outside of placer claims and mill sites upon lode claims, except in connection with an application for patent upon a mineral lot?

Ans. I do not know. I presume there are records of such surveys, especially if made to show the boundaries of adverse claims.

Q. What has the surveyor-general to do with the plat filed in support of an adverse claim?

Ans. These plats are sometimes certified by the surveyor-general as being correct, I believe, and are filed with an adverse claim to show the boundaries and extent of the conflict.

Q. In what year did you first become familiar with the details of practice in the mineral division of the Land Office at Washington?

Ans. I commenced my practice before the General Land Office, including the mineral division thereof, about ten years ago, and familiarized myself with the practice on various points as occasion required.

Q. Were you, as early as 1876, thoroughly posted on the details of routine and practice in the matter of the issuing of patents to lode mineral lands?

Ans. No, sir; not thoroughly.

Q. Were you at any time before you entered the services of the Department some two years since?

Ans. I thought I was pretty well posted when I went into the office on the mining laws, regulations, and the practice.

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Q. What is the usage of the Department when they are about to issue patent which will conflict with previous grants as to notice to parties interested?

(Complainant's counsel objects, because it is irrelevant and immaterial.)

Ans. The usual practice is to give notice to interested parties, if they are adverse claimants, and the present practice would be against issuing a

patent for land already patented to another party, unless specially authorized by law.

Q. Was any notice given in this instance, either of the issue of the Cayuga patent, or of the step preliminary thereto?

Ans. I think not. No conflict appearing in the Cayuga survey with the Tunnel No. 5 claim 247, as far as I know.

Q. Is there not kept in your Department at Washington, as well as in each surveyor-general's office, a corrected map or plat showing all interfering lines and conflicting areas, especially in the mineral department?

Ans. We have a corrected plat of mineral surveys, but it has not been kept up. I think the work was discontinued thereon about nine months ago.

Q. Since the entry of No. 5, in 1873, how many different entries have been made of lode claims, covering the survey of the Cayuga, or portions thereof, without excepting the Cayuga survey?

Ans. I do not know. I never examined into the matter further than the Tunnel Lode 5 claim.

Q. Is it not a fact that 6 different lode claims exclusive of No. 5 have been since entered covering portions of the Cayuga survey in which claims no exception of the Cayuga Lode has been made?

(Complainants' counsel object, as immaterial and irrelevant.)

Ans. I do not know. I have already stated that I never ex-
122 amined the matter further than the Tunnel Lode No. 5.

Q. Then if you don't know, it may be that in spite of the case of the chief of the mineral division, the same ground may be patented 8 different times without the chief of the mineral division knowing that it has been patented more than twice?

(Complainants' counsel objects, as irrelevant, immaterial, impertinent, improper, argumentative, and speculative.)

Ans. I was not chief of the mineral division at the time the Cayuga claim was patented, and the survey indicated no conflict.

Q. Then in issuing this patent the Department regarded only its application proper and survey, without examination into what patents had issued over the same ground between 1873 and 1882, and in particular I call your attention, aside from the No. 5 patent, to Tunnel Lode No. 6; the Coulter Lode, survey 530; the Halcyon Lode, 605; the Reynolds Lode, survey 515; the Cuba Lode, survey 259; and the Standard Lode, survey 1473.

(Complainant's counsel objects for same reasons last above assigned.)

Ans. I know nothing about the claims referred to, or I have never examined into the matter, as before stated. I do not know what lands were included or excluded from the respective applications, nor whether any adverse claims were filed by any of the parties while applications were pending.

Q. Do the Department issue mineral patents where there are undivided owners, except upon application of all the owners?

Ans. Yes, sir; where one of the applicants applies for and in behalf of all.

Q. Was one allowed to apply in behalf of all in 1873?

Ans. I am not certain whether that entry extended back to 1873.

Q. Have you ever known any instance where a patent to a mineral lot

has issued except in the case of the Cayuga, after thedisclaimer and withdrawal of one of the pretended owners?

123 Ans. I have never examined into this particular point, and consequently cannot answer yes or no.

Q. When two or more parties claim the same land and the survey is set aside or application thrown out by any of the Departments, what is the usual length of time allowed to the losing party for appeal or protest, and what was the usual time allowed in 1873?

Ans. When an application or entry is held for cancellation or rejection by the General Land Office Department, 60 days from date of notice thereof is allowed for appeal to the Secretary of the Interior; my recollection is that the same time was allowed for appeal by the practice in 1873.

Q. How is notice of the time for an appeal usually given?

Ans. It is usually given in writing through the mails.

Q. On the supposition that the local office in 1873 had or exercised the power to reject or cancel the application on the Cayuga Lode upon the written withdrawal of one of the claimant's thereto, what time for appeal should properly have been given, and how should notice of the same have been assured?

Ans. If they had such authority, the usual time for appeal to the best of my recollection, in 1873, would have been 30 days. Notice would have been given in writing by personal service or by mail at that time.

Q. As far as your knowledge goes have not all the papers referred to by you in this case, including maps, been on file in the local office, in Colorado, or in the General Land Office, in Washington, from the time of filing in 1873 until you brought the originals out here a few days ago, and opened to the inspection, under proper supervision, of all parties interested and their attorneys?

Ans. The field-notes and plat of original survey were not forwarded to Washington, as I have before stated. All the papers that were so forwarded have, to the best of my knowledge and belief, remained in

124 the files of the General Land Office since the date they were filed there.

Re-examination:

Q. How do you know what the practice was in 1873 in respect to applications for and entry of lode mining claims?

Ans. I know it from the experience that I have had before the General Land-Office, and also by reason of the fact that as chief of the mineral division of that office I have to consider and pass upon old applications and entries which come up for examination and not yet finally settled.

Q. In 1873 could one of several joint applicants for patent of a lode mining claim without the consent of, and in hostility to, his co-applicants after an adverse claim filed and suit in support thereof commenced withdraw an application, or, by withdrawing from an application, defeat or render void the application while suit was so pending and undetermined in a court of competent jurisdiction?

(Defendants' counsel object, because the question is not coherent; 2nd, so far as intelligible calls for a mere legal opinion.)

Ans. While one of several co-owners may for himself and in behalf of the others file an application for patent, the practice of the office does not recognize in any one of such owners the right, without special authority

so to do from his co-owners, to withdraw their application for patent; a co-owner's acts in the interest of the others is recognized as stated; but the acts against the interest of his co-owners are not recognized without special authority from the others; but when a suit brought upon an adverse claim and commenced within the statutory period is pending there is no authority in the register and receiver to withdraw or set aside the application pending such suit. The practice is based upon the act of 1872, and I believe was in 1873 as it is now.

By consent of counsel the further taking of testimony herein is continued until Thursday, the 6th day of December, A. D. 1883, at ten
125 o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Thursday, the 6th day of December, A. D. 1883, at ten o'clock a. m., counsel for the respective parties being present, JOSEPH TYSSOWSKI, witness for complainant, in continuation of his cross-examination, deposes and says:

Q. Can a number of fractional owners of a mine obtain a patent to a mining claim in their respective names in a case where, for example, one owns an undivided fourth, another an undivided tenth, and another an undivided one-sixth, and another an undivided one-third, and so on; is each one owning different fractional parts thereof constituting the entire claim?

Ans. Yes, sir. Such patent may issue to the undivided owners, but if the owners are members of one incorporated company, which is the applicant and owner, the patent would issue to such company.

Q. What would be the effect if one such fractional owners should withdraw from an application, or refuse to join the others in prosecuting such application to patent?

Ans. I believe if the party so withdrawing before publication of the application did not file an adverse claim he would lose whatever rights he may have had, and patent would issue to the applicants.

Q. You mean to say therefore, I suppose, that the party so refusing to proceed as stated would forfeit or lose all, or any right he may have had to share in the ground thereafter patented?

Ans. Ordinarily; yes, if such withdrawal was made before publication of the application for patent.

Q. Suppose that a party owning such fractional interest should refuse at the outset to join his co-owners in an application for patent would the other co-owners have a right to proceed to use his name in the
126, 127 application for patent without his consent, and should a patent issue in such a case to all the owners, including the one refusing to join in the application, or would it issue at all, according to the rules and regulations of the Land Department in 1873?

(Complainants' counsel objects, because it is irrelevant and immaterial.)

Ans. A party owning an interest would have to file an adverse claim to protect his rights; after an application had been filed, the right of one co-owner to withdraw for the others without special authority would not be recognized. I don't know what the office would have done in 1873, in case where one of several co-owners refused to join in an application.

In such a case coming up now, I believe everything appearing regular, patent would issue to the applicants if such outstanding co-owner who had refused to join in the application had failed to protect his rights by filing an adverse claim as required by law.

(Signed) JOSEPH TYSSOWSKI.

Subscribed and sworn to before me the 6th day of December, A. D. 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Thursday, the 6th day of December, A. D. 1883, at ten o'clock a. m., at my office in Denver, counsel for the respective parties being present, the complainant produced FRANCIS J. MARSHALL, a witness in its behalf, who, being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Francis J. Marshall; age, 67 years; occupation, mining broker, and reside at Denver, Arapahoe County, Colorado.

Q. Are you the president of the Marshall Silver Mining Company?

128 Ans. If the Marshall Silver Mining Company has a president now I am its president.

Q. I believe your were sobpœnaed to produce certain books of that company on this hearing or examination; have you those books; if not, who has them in custody at this time so far as you know or are informed?

Ans. I have not those books; they are in the Marshall Silver Company's safe at Georgetown, and in charge of Earnest Le Neve Foster, who was the secretary of the company, and has had charge of the books for years, and also has charge of the seal; no one is allowed to handle the books but himself.

Q. Where does Mr. Foster reside?

Ans. His residence is in Georgetown, Colorado. He has an office in Denver as an officer of the State Government.

(Signed) FRANCIS J. MARSHALL.

Subscribed and sworn to before me this 6th day of December, A. D. 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

By consent of counsel the further taking of testimony is hereby continued until Thursday, the 20th day of December, A. D. 1883, at two o'clock p. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Thursday, the 20th day of December, A. D. 1883, at 2 o'clock p. m., counsel for the respective parties being present, complainant produced ERNEST LE NEVE FOSTER, a witness of lawful age, being by me first duly sworn, to testify the truth, the whole truth, and nothing but the truth, in relation to the matters in controversy in this cause, deposed and testified as follows:

129 Q. State your name, age, occupation, and place of residence.

Ans. My name is Ernest Le Neve Foster; age, 34 years; occupation, mining engineer, and reside at Georgetown, Colorado.

Q. Have you the books of the Marshall Silver Mining Company, and if so, by what authority, and what are your relations to that company, and how long have such relations continued?

Ans. I have the books of the Marshall Silver Mining Company. I was elected secretary of the company in January, 1879, and I have had possession of the books ever since.

Q. Who were the officers of said company from December, 1872, to January, 1880, as appears by said books?

Ans. Those elected in 1872, Francis J. Marshall, Frank A. Pope, H. M. Holden, Charles R. Fish, and J. H. Jones; these were the directors. F. J. Marshall was elected president, Wm. H. Cushman was elected treasurer, then later on Thomas R. Owen was elected secretary and treasurer, Wm. H. Cushman having resigned. September, 1873, Frank J. Marshall, H. M. Holden, S. W. Bonton, F. A. Pope, J. H. Jones, were elected directors, F. J. Marshall was chosen president, S. W. Bonton was chosen secretary and treasurer. June 24th, 1875, S. W. Bonton resigned as trustee, secretary, and treasurer, and Wm. M. Clark was elected in his stead. September the 7th, 1875, Frank A. Pope, Wm. M. Clark, H. M. Holden, J. H. Jones, and F. J. Marshall were elected directors. F. J. Marshall, was elected president, and Wm. M. Clark was elected secretary and treasurer. On the 20th of September, 1876, Francis J. Marshall, Wm. H. Cushman, Charles R. Fish, George W. Hall, and Wiley C. Williams were elected directors; F. J. Marshall was elected president, and Wiley C. Williams secretary. February 19th, 1877, George W. Hall was elected treasurer. September 4th, 1877, F. J. Marshall, George W. Hall, Edward H. Allen, M. W. St. Clair, and F. A. Pope were elected trustees and directors; F. J. Marshall was elected president, Wiley C. Williams secretary, and George W. Hall treasurer. September 3rd, 1878, Wm. M. Clark, George W. Hall, Frank A. Pope, and Howard M. Holden
130 were elected directors; F. J. Marshall was elected president, and G. W. Hall was elected secretary and treasurer. January 24th, 1879, George W. Hall resigned as secretary and treasurer, and Ernest Le Neve Foster was elected in his stead. Since that time there has been no other officers chosen.

Q. Between the dates last mentioned who were the general superintendents or managers of said company?

Ans. I believe F. J. Marshall was the whole time, so far as I can ascertain.

Cross-examination:

Q. Was Mr. George W. Hall superintendent of the Marshall Silver Mining Company?

Ans. I never knew of his being, and it does not appear on the record that he ever was.

(Signed) ERNEST LE NEVE FOSTER.

Subscribed and sworn to before me this 20th day of December, A. D. 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

Complainants also produced GEORGE W. HALL, a witness of lawful age, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is George W. Hall; age, 58 years; occupation, mining superintendent, and reside in Georgetown, Clear Creek County, Colorado.

Q. How long has Georgetown, Clear Creek County, Colorado, been your place of residence?

Ans. Since May, 1868.

Q. Had you resided there before May, 1868, or been in business there?

Ans. I had not resided there previous to that date, and had not been in business there prior to that time.

131 Q. Of what mine and for what mining company, if any, are you mining superintendent?

Ans. I am superintendent for the Colorado Central Consolidated Mining Company.

Q. How long have you been such superintendent for said company?

Ans. Since the organization of the company, January 1st, 1880.

Q. What, if anything, did you have to do with the negotiations for the purchase of Tunnel Lode No. 5, so called among other mining claims, for the Colorado Central Consolidated Mining Company?

Ans. Nothing whatever.

Q. Have you the books of the Colorado Central Consolidated Mining Company, showing the names of the officers and directors of that company, at the time of its organization?

Ans. I have not.

Q. State the reason, please, why you have not produced these, as required by the subpœna.

Ans. I was subpœnaed on the 18th of this month to appear here on the 20th, to-day, and it would be impossible for me to get the books from New York in that time.

Q. How long have these books been in New York, and in whose custody are they now?

Ans. They have been in New York since the organization of the company, and I suppose they are now in the possession of Paul O. D. Esterhazy, the secretary of the company.

Q. What office, if any, have you held in the last-mentioned company other than superintendent?

Ans. I have been one of the board of trustees for the past two years; no other, except that I am the general agent in Colorado, and have been since about 8 or 10 months after the organization of the company.

Q. State, if you know, who the original organizers of said com-

132 pany were.

Ans. I do not.

Q. Were you one of the original organizers?

Ans. I was not.

Q. When, if ever, did you first become a stockholder in the company?

Ans. My stock was issued in February, 1880, or about that date.

Q. When did you first acquire a right to have such stock issued to you?

Ans. About the time of the organization of the company.

Q. Mention, if you can, the names of its first board of trustees or directors and the names of its first board of officers, and designate their respective officers in the company.

Ans. I can only give you the names of one of the original board of trustees, but believe that I have the prospectus of the company, which was published at the time the company was organized, which gives the names of the trustees and other officers, but have not got it here. The trustees whose name I remember is Paul Lichtenstein; he was the first president of the company, and is still president.

Q. Do you know the location of Tunnel Lode No. 5 in controversy in this suit either generally or particularly; if so, how long have you known it?

Ans. I know Tunnel Lode No. 5, and have known something of it since 1876 or 1877.

Q. What, if anything, had you to do with it before the organization of said company?

Ans. I think it was in 1876 or 1877. There was a company organized to work No. 5 under lease from the Marshall Silver Mining Company, and I was a stockholder in that company; some time after the organization of this company I was president and superintendent of that company. I was not in charge of the work during the whole time that the company was working under lease. The company built an engine chamber at the Marshall Tunnel level, about 350 feet below the surface, and sunk
133 a shaft on said level about 75 feet deep; this was all the work done by that company that I know of.

Q. What, if anything, do you know of any parties, before the acquiring by the Colorado Central Consolidated Company, examining said Tunnel Lode No. 5 with a view to purchase it with other property for said company?

Ans. I know nothing about it except from hearsay.

Q. Was your information by hearsay in this respect derived from said company, or any of its officers or agents, or from persons who subsequently became its officers or agents?

Ans. I can't say just how I got my information or from whom, but was informed through some source that the title had been examined and found perfect. I was aware that the Marshall Silver Mining Company had a patent to No. 5 Lode, as I had seen the patent.

Q. At what time, as near as you can now state, did you see the patent?

Ans. It was about December, 1878.

Q, What was the occasion for your seeing the patent at that time?

Ans. In the fall of 1878 litigation commenced between the Equator Mining and Smelting Company and myself and Charles H. Marshall, the owners of the Colorado Central Lode Mining Claim. I was one of the owners of the Colorado Central Lode, and in looking up that patent for the Colorado Central I saw the patent to No. 5.

Q. When did your negotiations with a view to acquiring stock in the Colorado Central Consolidated Mining Company commence?

Ans. I think it was in the month of November, 1879.

Q. With whom did you negotiate at that time for such purpose?

Ans. My talk in reference to the Colorado Central Consolidated Mining Company's stock was with George Turnbull and General Marshall,

at which time I authorized Mr. Marshall to subscribe for some of the stock for me under certain conditions.

Q. Where did said George Turnbull at that time reside?

134 Ans. I think his residence was in New York City.

Q. Was said George Turnbull connected in any way with the Colorado Central Consolidated Mining Company at that time or at its organization; and, if so, in what manner connected?

Ans. Mr. Turnbull sold the property to the Colorado Central Consolidated Mining Company; I don't know what other connections he may have had with the company.

Q. You know whether he was a stockholder in said company at its organization?

Ans. I can't say from my own knowledge, but believe that he was a stockholder.

Q. How, if at all, was Francis J. Marshall connected with the Colorado Central Consolidated Mining Company at its organization?

Ans. I don't know as he was connected with it in any way.

Q. What companies or organizations were consolidated into the Colorado Central Consolidated Mining Company?

Ans. The Colorado Central Lode was consolidated with the property owned by the Marshall Silver Mining Company.

Q. Who were the owners, as near as you can now remember, of the Colorado Central Lode Mining Claim at the time of the litigation mentioned by you?

Ans. Mr. Charles H. Marshall and myself.

Q. Who conveyed the Colorado Central Lode Mining Claim to the Colorado Central Consolidated Mining Company?

Ans. I think it was Mr. George Turnbull; I made a deed to Mr. Turnbull for my interest in the lode; but am not certain but when the interest that I held in the Colorado Central was conveyed to the Colorado Central Company I may have made a deed direct to them; I don't recollect positively about that.

Q. What, if anything, do you know about said George Turnbull being at or near Tunnel Lode No. 5, and making examination on the

135 ground or in respect to the title thereto before he acquired title thereto?

Ans. I don't know anything about that, sir, I know that he was in Georgetown several days about the time the deeds were made.

Cross-examination:

Q. At the time when you held an office in the Marshall Silver Mining Company how many shares did you own?

Ans. I was told that there was one share of the stock transferred or issued to me.

Q. Did you have more than a nominal interest in that company?

Ans. I did not consider that I had any interest in the company.

Q. Did you take any part in its management or attend the meetings?

Ans. I did not take any interest in the management of the business, any further than that I was appointed or elected treasurer of the company, and and I looked after the funds of the company only. I may have at-

tended 3 or 4 of the meetings during the time that I was trustee, in order to make a quorum for the transaction of business.

(Signed) GEORGE W. HALL.

Subscribed and sworn to before me this 20th day of December, A. D 1883.

(Signed) JOHN W. WEBSTER,
Examiner.

(It is admitted in evidence by the parties that Hugh Butler was a member of the firm of Butler and Morrison, whose names are subscribed as attorneys for plaintiff to the declaration in ejectment, a copy of which appears in Exhibit A.)

By consent of counsel the further taking of testimony is continued until Monday the 31st day of December, A. D. 1883, at two o'clock p. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

136 Pursuant to the foregoing continuance, this Monday, the 31st day of December, A. D. 1883, at two o'clock p. m. at my office in Denver, C. J. Hughes, jr. esq., appeared as counsel for defendants and A. W. Brazee, esq., U. S. district attorney, for the complainant, and it appearing that neither Mr. B. M. Hughes nor Mr. R. S. Morrison, who have heretofore appeared herein, are *un*able to attend to-day, upon the application of the defendants the taking of evidence on the part of the complainant is continued until Wednesday, the 2nd day of January, A. D. 1884, at the hour of ten o'clock a. m., at my office in Denver. It being stipulated by counsel that the complainant may take its testimony on that day with the same force and effect as if the same were taken to-day.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Wednesday, the 2nd day of January, A. D. 1884, at ten o'clock a. m. at my office in Denver, the counsel for the respective parties being present, counsel for complainant now produces circular, Department of the Interior, General Land Office, June 10th, 1872, containing rules and regulations respecting mineral lands and offers the same in evidence, which is hereto attached and marked Exhibit K.

To which the counsel for defendants objects, because it is irrelevant.

Complainants' counsel now offers in evidence a certified copy certificate of incorporation of the Colorado Central Consolidated Mining Company, which is hereto attached and marked Exhibit L.

To which counsel for defendants objects because it is irrelevant.

Complainant's counsel now offers in evidence certificate of the clerk and recorder of Clear Creek County, which is hereto attached and marked Exhibit M.

137 Defendants' counsel objects, because it is irrelevant, and incompetent to prove the purport of the certificate.

Complainants' counsel now offers in evidence certified copy of deed

dated 16th day of June, A. D. 1873, from the Marshall Silver Mining Company to Wm. T. Linn, which is hereto attached and marked Exhibt N.

Defendants' counsel object, as irrelevant to any issue.

Complainant's now offer in evidence a certified copy deed dated the 17th of November, 1879, from the Marshall Silver Mining Company to George Turnbull, which is hereto attached and marked Exhibit O.

Defendants' counsel object, as irrelevant to any issue.

Complainant's counsel now offers in evidence a certified copy deed dated the 15th day of December, 1879, from George Turnbull to the Colorado Central Consolidated Mining Company, which is hereto attached and marked Exhibit P.

Defendants' counsel object, as irrelevant to any issue.

Complainants now produce WALTER N. WEBSTER, re-called as a witness on its behalf, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Walter N. Webster; age, 66 years; occupation, mining and prospecting, and reside in Lawson, Clear Creek County, Colorado.

Q. Do you know George Turnbull, mentioned in the deeds in evidence, and who is now here present; if so, how long have you known him?

Ans. I became acquainted with him in the fall of 1877, when he was operating in Mill City, now called Dumont.

Q. Did you have any conversation with him before November, 1879, in respect to the Cayuga Lode, and your claim thereto, and the contention between you and the Marshall Silver Mining Company in respect to that lode; if so, state when and where such conversation occurred, and particularly, as near as you can now remember, what you said to him

138 on the subjects in this question above referred to.

(Defendants' counsel object, as irrelevant and incompetent.)

Ans. I had a conversation with Mr. Turnbull, I think in Mill City, now called Dumont, in regard to the Cayuga Lode, in the fall of 1877 or spring of 1878, I can't say which. I told him that I had discovered a good mine up on Leavenworth Mountain, called the Cayuga, in the fall of 1867 when I discovered it; that I had had trouble on the mine from the Marshall Silver Mining Company; and that I had been driven out of the mine by force. Afterwards we applied for a patent, and the Marshall Silver Mining Company adversed us, and brought a suit in ejectment. I told him they afterwards withdrew their adverse claim, as I learned from the clerk and had their patent. I then stated that I thought there was a fraud somewhere; and that as soon as I could I was going to look the matter up and see if I could get to the bottom of it. I don't recollect what reply Mr. Turnbull made to me at the time, or whether he made any reply; could not say.

Q. How did you come to have this conversation?

Ans. I believe it came about by exhibiting some ore I had from the La Crosse mine. I think he took a piece of that and had it assayed by Mr. J. B. Grant, assayer at that time. He was at that time bonding property and wanted to get into some good mines.

Cross-examination:

Q. Then you did know before this supposed conversation with Turnbull that patent had issued to the No. 5 Lode?

Ans. No, sir; no further than I was informed by the clerk of the court, Mr. Atkins.

Q. When did Mr. Atkins inform you?

Ans. It was at the term of the court, I think, in 1874. It was after we had been adversed; I think the second term of court after we had been adversed.

139 Q. If you had this conversation with Mr. Turnbull, how long was it before he had begun negotiating for the No. 5 Lode?

Ans. I couldn't tell, because I did not know when he resumed negotiating.

Q. How long is it since you saw Mr. Turnbull before this present trip of his to Denver?

Ans. I don't recollect; it was some time ago. Have not seen him since he left Mill City until day before yesterday.

Q. Did you have any business dealings with Mr. Turnbull or any associations with him that would cause him to recollect you personally, or to recall this conversation if it occurred, or that would impress it on his memory?

Ans. Well, I never had any business dealings with him other than I have stated. I can't say whether he would recollect me or not. I often talked with him.

Q. Did he ever buy any ores of you?

Ans. No, I think not.

(Signed) WALTER N. WEBSTER.

Subscribed and sworn to before me this 2nd day of January, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

The complainant here closed its testimony in chief this 2nd day of January, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

In the circuit court of the United States for the district of Colorado.

THE UNITED STATES, COMPLAINANT,
vs.
140 THE MARSHALL SILVER MINING COMPANY and the Colorado Central Consolidated Mining Company, defendants. } In equity.

On application of the complainant, by A. W. Brazee, esq., solicitor, it appearing that the said complainant' desire the evidence to be adduced in said cause in rebuttal to be taken orally, under the sixty-seventh rule of the Supreme Court of the United States, and amendments, it is ordered that Wednesday, the 9th day of April, A. D. 1884, at ten o'clock a. m., at my office, in Denver, be, and is hereby fixed as the time and place for taking

the same, and that five days' notice be given to defendants' solicitor of time and place at which the examination of witnesses in said cause will commence.

Dated at Denver this April 3rd, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

In the circuit court of the United States for the district of Colorado.

THE UNITED STATES, COMPLAINANT,
vs.
THE MARSHALL SILVER MINING COMPANY AND the Colorado Central Consolidated Mining Company, defendants. } In equity.

To Morrison and Fillius and B. M. and C. J. Hughes, solicitors for the above named defendants:

Take notice, that the complainant desires the evidence to be adduced in rebuttal in the above entitled cause to be taken orally, under the sixty-seventh rule in equity, prescribed by the Supreme Court; and by an order of John W. Webster, esq., one of the examiners of said court, lately made in said cause, it is directed that five days' notice of the time and
141,142 place at which the examination of witnesses in said cause will commence be given to the defendants' solicitors. You will further take notice, that the examination of witnesses on behalf of the complainant in said cause will commence before the said examiner at Denver, in the city of Denver, on the 9th day of April, A. D. 1884, at ten o'clock a. m., and proceed as said examiner may direct.

Dated at Denver this April 3rd, A. D. 1884.

(Signed) A. W. BRAZEE,
U. S. Attorney and Solicitor for complainant.

Hereby acknowledge service on us of a copy of the within notice, this 3 day of April, A. D. 1884.

(Signed) B. M. & C. J. HUGHES, JR.,
Solicitors for the M. S. M. Co.

Rebuttal evidence.

Complainants' counsel now produces WILLIAM H. LESSIG, a witness in rebuttal, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is William H. Lessig; age, 52 years; occupation, civil engineer, and reside in Denver, Colorado.

Q. Were you formerly surveyor-general of Colorado, and of so from what time to what time?

Ans. I was surveyor-general from 1867 to 1874.

Q. Have you examined Exhibit C, shown you, purporting to be a copy of all the papers in the matter of Central City, Colorado, mineral entry

No. 358, for the claim of the Marshall Silver Mining Company, of Georgetown, upon the Tunnel Lode No. 5?

143 Ans. I have examined the field-notes of the survey and the certificates attached to them only.

Q. In the ordinary course of business in a surveyor-general's office, Colorado, between December 1st, 1872, and June 1st, 1873, if an amended survey of said Tunnel Lode No. 5 had been ordered by you as such surveyor-general, what evidence, if any, would be made in the surveyor-general's office of such order having been made?

(Defendants' counsel objects as not being proper rebuttal.)

Ans. There would be a copy of the order there.

Q. In what book or file?

Ans. It would be in the letter-book, and then also be among the letter files, a letter asking for the amended survey. Letters were always kept that were received and filed.

Cross-examination:

Q. Is it not a fact that for a certain period, including the dates mentioned by the United States attorney, there were no copies kept of the letters sent from the office, or at least that no such copies can now be found of such letters with reference to amended surveys?

Ans. The last part of the question I cannot answer; while I was there there was a copy of all those letters taken.

Q. Since the adjournment we have had another search made, and now find the book purporting to contain copies of the letters to surveyors during the period mentioned; please examine this book and see if you do not find on page 68 of this letter-book a copy of letter bearing your signature, dated May 17th, 1873, authorizing the amended survey on the No. 5 Lode?

Ans. I find here, sir——

Q. Do you find it in its proper place and regular form?

Ans. Yes, sir.

Q. How does it read?

Ans. "SURVEYOR-GENERAL'S OFFICE, COLORADO

144 "*Denver, May 17th*, 1873.

"To any United States deputy mineral surveyor in Central City land district, Colorado Territory:

"Sir: You are hereby directed to forward amended notes and plat, and the claim of the Marshall Silver Mining Company, consisting of 950 feet in length by 50 feet in width on Tunnel No. 5 Lode, situated in Griffith mining district, Clear Creek County, Colorado.

"This survey will be numbered as follows: Survey No. 326, district No. 2, original survey No. 247.

"Very respectfully, your obedient servant,

"W. H. LESSIG,

"*Surveyor-General of Colorado.*"

Q. You state that there should also be "among the letter-files a letter asking for the amended survey." State whether you find such letter in the shape of the paper now handed you dated May 13, 1873, signed by the Marshall Silver Mining Co., by F. J. Marshall, president, a copy of which has already been offered in evidence.

Ans. I find a letter here dated May 13, 1873, asking for an amended survey.

Q. From an examination of the letter book shown you, and the letter from General Marshall just shown you, and the survey and amended survey on the No. 5 Lode, please state whether you find anything irregular or out of the usual course of the office at that time in the matter of the amendment to No. 5 survey.

Ans. I can see nothing here that is not regular.

Q. Please look at this index record which purports to contain an entry of cancellation opposite the Cayuga Lode, and state in whose handwriting such entry is made and whether such entry was according to
145 the due course of business in the surveyor-general's office at that time?

Ans. The handwriting is E. W. Cobb's, who was clerk in the office at the time. It was according to the due course of business in the office at that time.

Q. From the time of that entry of cancellation what would be the status of the Cayuga survey to other surveys over the same ground?

(Complainant's counsel objects; not cross-examination, and because the evidence shows that the cancellation or purported cancellation was not made by any competent authority.)

Ans. Well, I suppose we would have allowed other surveys over the same ground.

Q. In fact, you do find that the No. 5 Lode was approved over the same ground to the exclusion of the Cayuga by yourself officially, do you not?

Ans. Yes, sir.

Re-examination:

Q. I hand you book; please state what it is.

Ans. Field notes, mining claims district No. 2, in 1873, of the surveyor-general's office of Colorado.

Q. I call your attention to amended field notes of survey 247, Tunnel Lode No. 5, and ask you to state whether there is any certificate of the surveyor-general thereto.

Ans. I fail to find any.

Q. What payment, if any, according to the usual course of business in the surveyor-general's office, was required in case of application for amended survey, requested by the letter of May 13th referred to on your cross-examination, a copy of which is included therein?

Ans. Sixteen dollars would have been required to be deposited with an assistant surveyor of the United States at that time.

Q. What memorandum of such payment, if any made, would ap-
146 pear in the records of the surveyor-general's office, and in what book or file?

Ans. I could not tell in what book, but there was an account kept of each of those deposits deposited to the credit of the surveyor-general and clerks in his office.

Recross-examination:

Q. Do you not find your certificate to the plat of the amended survey of the No. 5, certifying among other things that the amended field-notes

of the Tunnel Lode No. 5, from which that plat was made, "have been examined and approved and are on file in this office," and do you look upon the want of your certificate on the field notes in the book as anything more than a clerical omission?

Ans. I find the certificate all regular, but I find a note in pencil over the field-notes in Mr. Cobb's handwriting, "no Washington copy needed," and that may have been the reason for omitting the certificates, or it may have been a clerical omission.

(Signed) W. H. LESSIG.

Subscribed and sworn to before me the 10th day of April, A. D. 1884.

(Signed) JOHN W. WEBSTER, *Examiner*.

Complainant's counsel now produces OTHENIL R. CANNON, a witness in its behalf, who being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Othenil R. Cannon; age, over 21 years; occupation, draftsman at present; profession, engineer; and reside in Denver, Colorado.

Q. Are you at present employed in the surveyor-general's office of Colorado; and, if so, how long have you been employed there, and in what capacities?

147 Ans. I am. I have been in the surveyor-general's office since November, 1878, as examining draughtsman chiefly, and calculator of surveys.

Q. Have you examined the book in which cash deposits for surveys and amended surveys on mineral claims in May, 1873, were entered for entry of such deposit on the application of the Marshall Silver Mining Company for amended survey on Tunnel Lode No. 5, original survey 247; and, if so, do you find that any such deposit was made or entered?

(Defendant's counsel objects because it is not proper rebuttal testimony.)

Ans. I have examined the book referred to, and discover no entry during May, 1873, having been received for amended survey 247, or in fact any survey.

Q. Was it the usage of the office in and about May, 1873, according to the accounts books kept in the office, to require the $16.00 *dollar* deposit or fee to be paid in all cases of amended survey?

(Complainant's counsel objects to last question that it appears witness was not employed in the surveyor-general's office until 1878, and that but inference from the manner in which the book was kept and not competent evidence.)

Ans. I can only judge by present practice. If no examination or calculation has to be gone over, it is optional with the office whether any charge shall be made at all.

(Complainants' counsel objects as irrelevant.)

(Signed) OTHENIL R. CANNON.

Subscribed and sworn to before me this 10th day of April, A. D. 1884.

(Signed) JOHN W. WEBSTER, *Examiner*.

Complainants' counsel now produces ERSKINE MCCLELLAN, a witness, recalled and duly sworn, says:

148 Q. What was the name of your attorney in Washington on the application for patent on the Cayuga Lode?

Ans. It was Bradford. I can't remember the first name now; it was not J. M. It was Robert, I think.

Q. Was your attorney Bradford ever in Colorado to your knowledge or belief?

Ans. No, sir.

Q. You have mentioned J. M. Bradford. Was he ever in Colorado to your knowledge; and if so, when, or about when?

Ans. About the first of January, 1875.

Q. Was he your attorney in respect to the application referred to?

Ans. No, sir.

Q. I call your attention to Exhibit I, a plat, and to the plat of the Senaca, Cayuga, Camadice, and Honenjoy, and ask you whether that part of the plat purporting to represent the relative positions of these claims is correct, as the same were located on the ground and by certificates of location?

Ans. They are not correct.

Q. Was the Cayuga, Honenjoy, Senaca, and Camadice located upon or from the same discovery shaft?

Ans. No, sir.

Q. What was the fact in respect to each having a separate discovery shaft?

Ans. There were four discovery shafts, one for the Cayuga, and one for the Senaca, and one for the Camadice, and one for Honenjoy.

Q. Now, state whether the Cayuga, as patented, is at right angles with the Cayuga as located.

Ans. It was located just where it was patented.

Q. What did you have to do with the official survey of the Cayuga for patent?

149 Ans. I carried the chain.

Q. What monuments did you find in carrying the chain indicating the original location of the Cayuga on the ground?

Ans. Shafts known as the Colorado Central Discovery, I carried the chain, and the line ran through the center in a southerly direction. We put up new stakes. The stakes were driven in the same holes as the old stakes were in.

Cross-examination:

Q. This John M. Bradford you speak of was a surveyor, and the brother of your attorney in Washington, and lived at Georgetown; is not that the fact?

Ans. Yes, sir.

Q. Were you one of the original locators of the Cayuga?

Ans. No, sir.

Q. How many years after it was located did you buy in?

Ans. About then, I think; can't tell exactly.

Q. Where was the Camadice discovery shaft?

Ans. In a southeasterly direction.

Q. From where?

Ans. From the Cayuga discovery.
Q. About how far?
Ans. It might have been 75 feet; I couldn't tell exactly.
Q. Where was the Honenjoy discovery shaft?
Ans. Well, I couldn't give the point of the compass, as they never were surveyed, except the Cayuga.
Q. How far from the Cayuga was the Honenjoy?
Ans. It might be 75 feet.
Q. Up or down the hill?
Ans. Down.
Q. To the left or right of the Cayuga?
150 Ans. Eastern side of the Cayuga.
Q. How far was it from the Honenjoy discovery to the Camadice discovery?
Ans. Perhaps 30 feet.
Q. How deep was the Honenjoy discovery?
Ans. Three feet; it might have been more.
Q. How deep was the Camadice?
Ans. About the same.
Q. Where was the Senaca discovery?
Ans. Perhaps 100 feet from the Cayuga.
Q. In what direction?
Ans. As near due east as I could place it.
Q. How deep was it?
Ans. The shaft in the drift, I think, was 43 feet.
Q. What drift are you talking about?
Ans. The drift of the Senaca.
Q. Is this the same workings that you spoke of in your previous examination as parcel of the Cayuga workings?
Ans. No, sir.
Q. How far is it from them?
Ans. The mouth of the Cayuga drift and the Senaca drift might be 18 feet apart.
Q. How long was this Senaca drift?
Ans. I measured it once, but I don't recollect; it may be 100 feet.
Q. When you say drift, do you mean a drift on the vein or a cross-cut?
Ans. A drift on the vein.
Q. From what was this Senaca drift started?
Ans. From the discovery.
Q. Which way did it run from the discovery?
Ans. As near westerly as I could locate it.
151 Q. How close did this Senaca drift come to the Cayuga discovery?
Ans. Right under it.
Q. You speak of the shaft in the drift on the Senaca; was this the Senaca discovery shaft?
Ans. The mouth of the drift was the discovery or near it. The shaft of 42 feet that I speak of was not the discovery shaft.
Q. Were the Senaca and Cayuga locations on the same vein?
Ans. They were not.
Q. How far apart were the Cayuga and Senaca veins?

Ans. A very short distance; I could not give the number of feet.

Q. About how far?

Ans. It might have been 18 feet at one place.

Q. Were they parallel veins?

Ans. No, sir.

Q. Was the Senaca vein north or south of the Cayuga?

Ans. In an easterly direction.

Q. What was the course of the Senaca?

Ans. As near easterly and westerly as I could put it.

Q. What was the course of the Cayuga vein?

Ans. I don't remember. I did look at the field-notes, as recorded on the patent deed, but I don't remember.

Q. I am not speaking of the field-notes; I asked you in what direction the vein of the Cayuga ran.

Ans. Same direction of the survey.

Q. If the Cayuga and Senaca are not the same vein, how could a drift on the Senaca run right under the Cayuga discovery?

Ans. It diverged as far as they went from the discovery.

Q. What discovery?

Ans. The Cayuga.

Q. Then at the Cayuga discovery and right under it, the Cayuga
152 and the Senaca were the same; is that correct?

Ans. It crossed there, but not at right angles,

Q. How far below the bottom of the Cayuga discovery was this Senaca drift?

Ans. I measured that with Albert Johnson, but I don't remember.

Q. State about how far below.

Ans. I guess it was 20 feet.

Q. Did this Senaca drift start at the surface?

Ans. Yes, sir.

Q. Between the Senaca discovery and the Cayuga discovery does the ground rise or fall or is it on a level between the lines of those discoveries?

Ans. It rises from the Senaca to the Cayuga.

Q. How much does it rise?

Ans. I don't know exactly.

Q. On going west 100 feet on the Senaca you have to gain 40 feet in depth to make that Senaca drift 20 feet below the bottom of the Cayuga discovery; is not that a fact?

(Complainants' counsel objects as not being cross-examination.)

Ans. I think it is more.

Q. More of a depth or more of a distance?

Ans. More of a depth.

Q. Who discovered the Cayuga, Honenjoy, and Camadice?

Ans. James W. Ames and Walter N. Webster.

Q. In making the survey for patent on the Cayuga did you follow the course given in the original record?

Ans. Yes, sir.

Q. What is the course given in the original record of the Cayuga?

Ans. Easterly and westerly.

Q. There is a bend or angle in the Cayuga or Palentia; does
153 the original record call for that bend?

Ans. No, sir.

Q. The original record of the Cayuga calls for 3,000; feet why did you patent it for 2,800?

(Defendants' counsel objects as not being proper cross-examination.)

Ans. A large rock on the eastern end, difficult to measure over, and took that much less.

Q. Did you drop the whole 200 feet off the eastern end?

(Complainants' counsel objects, same reason as before.)

Ans. Not certain, but think so?

Q. The original record of the Cayuga calls for a course northwest and southeast; why then do you say that it called for a course easterly and westerly?

(Complainants' counsel objects for same reason last above.)

Ans. I could not give the points of the compass; that was as near as I could get at it.

Q. Why did you say that the record called for easterly and westerly; I was not asking about the course of the vein at that time?

(Complainants' counsel objects for same reason as before.)

Ans. That was the best of my recollection.

Q. You say that the Cayuga was located just where it was patented; how can you say that when it is located northeast and southwest as the record reads, and is patented with a difference of at least 85° from that course?

(Complainants' counsel objects as immaterial; not cross-examination.)

Ans. That was my judgement of points of compass.

Q. You say that you put the stakes, when you carried the chain, in the same holes where the old posts had been. What old posts do you refer to?

154 Ans. I mean the stakes of the discovery.

Q. What stakes do you mean?

Ans. I mean the stakes of the discovery and not the stakes around the claim.

Q. You say in your direct examination "We put up new stakes; the stake' were down in the same holes as the old stakes were in." Do you now contradict that statement?

Ans. I understood myself to say the stake at the discovery.

Q. You said before you set these stakes, while you carried the chain. Is that statement correct?

Ans. Yes; I carried the chain; I was chain-carrier when they put the stakes in.

Q. You did not then refer to the stakes which lined the lode as you carried the chain?

Ans. No, sir.

By consent of counsel the further taking of testimony is continued until Friday, the 11th day of April, A. D. 1884, at 9 o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Friday, the 11th day of April, A. D. 1884, at 9 o'clock a. m., at my office in Denver, counsel for the respective parties being present, Erskine McClellan, in continuation of his testimony begun on yesterday, deposed and testified as follows:

Q. How many years since you have seen the Honenjoy, the Senaca, and Camadice shafts?

Ans. Eleven years.

Q. Where are they now; are they in existence?

Ans. I suppose the lower part of the Senaca is in existence; as to the others, they are obliterated.

155 Q. How did the two shafts, the Honenjoy and the Camadice, lie to each other?

Ans. They were not far apart on the eastern or southeastern side of the Cayuga; on the lower side; I couldn't tell you exactly how far apart they are.

Q. State how far, as nearly as possible.

Ans. They might have been 20 or 40 feet apart.

Q. Who first pointed out these shafts to you? I mean the whole four of them.

Ans. When I purchased the veins of J. W. Ames I went again to see those shafts standing on the dump of the Cayuga; Mr. Ames pointed to the Camadice, Honenjoy, and Senaca lodes, saying this is the discovery of each, and this here is the lode—the Cayuga—where we were standing.

Q. On the same day, by four records made by the same parties, these four lodes were claimed, and each record calls for a discovery shaft at the same point, and one runs northeast and southeast, one north and south, one east and west, and one northwest and southeast; do you mean to say that four different shafts were intended by the parties who made that record; and, if so, why did they choose the four right-angled courses, and why did they locate the discovery shaft of each at the same point.

(Complainants' counsel objects as immaterial and irrelevant and not proper cross-examination, assumes a fact not proven, and is speculative.)

Ans. It was not located on that day at all; I mean the day on which I tood on the dump. They did not locate them at the same point; they located them at discoveries of each shaft. I did not understand that they did take right-angled courses from the shafts pointed out to me.

Q. Did you ever look at the records of these four lodes?

Ans. No, sir.

Q. Why, then, did you swear that the Cayuga was patented just
156 where it was located?

Ans. Because I have got the original certificate in my possession at the present time of the Cayuga.

Q. If so, it shows it was located almost at right angles to its course as patented; it is further from the patented lines than any other of the four lodes; why, then, did you swear that the Cayuga was patented the same as located?

(Complainants' counsel objects to all this question except what follows "why," inclusive, on the same grounds before stated.)

Ans. I believe it to be patented just as located. I swear that it is patented just as it is located, as near as I could fix it.

Q. It is absurd to say that it is patented as located on the record, when

the two courses are at right angles. Do you mean then to say that it was patented as staked on the ground?

(Complainants' counsel objects to the first part of the question as impertinent, and for the reason last above stated.)

Ans. As the ground shown me by Mr. Ames when I purchased.

Q. Please answer the question. Did you follow the stakes on the ground?

Ans. No, sir; but one stake at the discovery.

Q. When you made the survey and put a new stake at the discovery, when you carried the chain, what, if anything, was put on that stake?

(Complainants' counsel objects, as immaterial and irrelevant and not cross-examination.)

Ans. A board nailed across the stick a few days afterwards with a diagram of the lode on it, for application for patent.

Q. Were you examined as a witness in the injunction proceedings in 1871 or 1872 between the Cayuga Lode and the Compass and Square, or No. 5?

(Complainants' counsel objects as irrelevant, immaterial, and not cross-examination.)

Ans. I think not; might have been but don't think so.

157 Q. Did not your side take the position, and did not Ames, the discoverer, swear that there were four different lodes in the Cayuga discovery shaft?

(Complainants' counsel objects, because it is immaterial and irrelevant and not cross-examination.)

Ans. I can't recollect of hearing Mr. Ames' evidence.

Redirect examination:

Q. What work was done on the Cayuga ground after the Cayuga parties were expelled from the drift, as stated by you in your former depositions, by the Cayuga parties or their lessees, if any? State the character and extent of the same fully.

(Defendants' counsel objects; not rebuttal.)

Ans. They run a drift on the vein about 60 feet, taking out some mineral, in a westerly direction, approaching the discovery shaft of the Cayuga, by Walter N. Webster and Erskine McClellan. Samuel Watson, lessee, sunk a shaft near the mouth of the drift, on the Cayuga Lode, 20 feet, and drifted easterly from the bottom of the shaft about 30 feet on the vein of the Cayuga Lode. Eli Streeter hired two men and sent them up to work on the Cayuga Lode. They worked several days on the Cayuga Lode. I did not see what they did; I was not there; Streeter did it.

Q. By whose direction or permission did Mr. Streeter cause these men to work there?

Ans. Erskine McClellan.

Q. Was this work to which you have just testified, or any part of it, and if a part only, state what part was, done before application for patent on the Cayuga made in December, 1872?

Ans. All was made before the application for patent except Streeter's.

Recross-examination:

Q. All this work was done except Streeter's prior to the final decision

of Judge Belford in which he decided against the Cayuga and in favor of the Compass and Square. Is that the case?

158 (Complainants' counsel objects as irrelevant and immaterial, it assumes facts not proven by any competent evidence.)

Ans. I don't know the date of Judge Belford's decision; I can't answer.

Q. Was it not done pending that litigation in 1871 and 1872 or before?

(Complainants' counsel objects for same reason above stated.)

Ans. I can't answer that; I don't know.

Q. In what years was this work done?

Ans. It was done before application was made for patent except Streeter's.

(Signed) ERSKINE McCLELLAN.

Subscribed and sworn to before me this 11th day of April, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

Complainants' counsel now produces WALTER N. WEBSTER, a witness recalled, and, being sworn, deposes and says:

Q. Were you one of the locators of the Camadice, Honenjoy, Senaca, and Cayuga lodes, and of each of them?

Ans. Yes, sir.

Q. I show you Exhibit I, a plat, and call your attention to that portion of it purporting to represent the relative positions of the said lode claims as located, and ask you whether it in that respect correctly represents the relative positions of those claims as located.

Ans. No, sir; they don't look correct to me.

Q. State whether these lodes were all located from one shaft as represented on said plant, and if not, state the fact in respect to the shaft of each.

Ans. No, sir; they were not all discovered in one shaft; the deepest shaft was on the Cayuga. The discovery shaft on the Cayuga was 30 feet deep, at the time made record; it caved in some afterwards by not being

159 timbered, and we started this drift on the Senaca to run under the shaft of the Cayuga. The shafts on the other veins the Camadice, Honenjoy, and Senaca, were below the Cayuga vein in an easterly direction. We made a discovery on each vein, I mean discovery shaft, but our main workings and development were on the Cayuga.

Q. What work, if any, was done on the Cayuga ground and vein after you were finally expelled from the drift, as stated by you in the former deposition in this case, and if any, what work was done, and to what extent after such expulsion and before the application for patent on the Cayuga in December, 1872?

Ans. After we was expelled from the drift, we went onto the Cayuga vein, Mr. McClellan and myself, and we run on the vein westerly from the mouth of the drift towards the discovery shaft of the Cayuga about 60 or 70 feet. There was a lease given to Mr. Samuel Watson by the company, Webster and McClellan, on the Cayuga vein. He sunk a shaft

about 20 feet, and drifted easterly something like 30 feet; that was previous, I think to applying for a patent. Then I think was a lease given after the patent was applied for to Mr. Stanly, I have forgotten his given name, but he has been in the recorder's office at Georgetown. He went to work there, and took in as a partner with him James O. Cannon; there was three of them, I have forgotten the other one's name. They took out some ore; I think he told me they took out one shaft that brought them $70.00 apiece for the time; that is what they told me; they run a crosscut a few feet westerly to strike what was called the old creek channel, that cut down the lode in places; that is where they took out their ore; it was the last shaft they worked, they were sinking down this and taking out their ore, and they came to a chunk of ore that was two feet thick, and they met Mr. Robinson coming up from below. This work was done after the application for patent was made.

Q. Referring again to said Exhibit I, state whether the rela-
160 tive positions of the Cayuga as located and the Cayuga as patented according to this plat are correctly represented on the plat.

Ans. No, sir; I think not.

Ans. No, sir; I think not.

Q. In what respect is the plat erroneous as to this relative position?

Ans. I think it is wrong in this Cayuga location course as they have got it here, and I think the relative position of the Cayuga, as patented, and Senaca, are wrong where they diverge.

Q. What did you have, if anything, to do with the original location of the Cayuga on the ground?

Ans. I put up a stake as a discovery stake, wrote on it the Cayuga Lode, discovered such a date; I cannot recollect the date now, it was along in the fall of the year some time.

Q. How did you determine the course of the vein at the time of location?

Ans. We judged, as near as we could, from the show of the vein in the shaft; we had no compass.

Q. State whether you were present when the original survey for the patent of the Cayuga was made; and what, if anything, you had to do with such survey.

Ans. Yes, sir; I helped on the survey, I was accompanying Mr. Bruné with the compass and setting the stakes.

Q. How many stakes; and where, if any, were placed, to indicate the exterior lines of the Cayuga at the time it was located?

Ans. At the time it was located there was only one stake placed; that was at the discovery shaft of the Cayuga.

Q. State whether the general course of the Cayuga vein, as surveyed, was the same as the general course of the vein as located, and in what respect if the courses differed, if at all.

Ans. I think it is correct; it looks so to me as surveyed on Exhibit I. (Pointing out the large profile on the map.) It did at the time, as I
161 understood the location; that is where I wanted the lode to run.

Q. Did the survey for patent correspond with the location in respect to the course?

Ans. It did not all the way through.

Q. Point out on the large profile of Exhibit I where the course is changed from the original location.

Ans. Well, I think it was changed at the bend, to the left of corner 5.

Q. How came that to be made?

Ans. It was not by my orders, nor any of my partners; it was an error of the surveyor. It was against my express directions decidedly.

Q. Who was the surveyor?

Ans. Mr. Bruné, the deputy surveyor.

Q. Was Mr. Bradford, the attorney of the applicants for patent on the Cayuga in Washington, ever in Colorado, to your knowledge?

Ans. No, sir; I never heard of his being there, to my knowledge.

Q. Do you know John M. Bradford?

Ans. Yes, sir.

Q. State when he first came to Colorado.

Ans. When I first became acquainted with him, soon after he came, it was in the spring of 1875.

Q. Have you been well acquainted with Leavenworth Mountain in the vicinity of the Cayuga Lode, Camadice, Honenjoy, and Senaca discovery shafts, ever since December, 1872? And, if so, state to what extent, if at all, the grounds have been excavated on the surface, and what the effect has been upon the discovery shafts of these claims.

Ans. Yes; I have been acquainted with the mountain for some time. Not quite so much recently, but pretty much the whole side of the mountain is covered over by others digging for float. The effect has been that these discovery shafts on the Honenjoy and Camadice are covered up. There is some show in the Senaca when they run the drift in. The
162 Cayuga, the last time I was up, I think it was in 1882, the shaft was there, and I went directly to it, and found it a good deal filled up from débris and caving in.

Cross-examination:

Q. If those four lodes were located on from separate discovery shafts, why did the record call for a shaft on each one, described the same?

Ans. I don't know anything about that; I don't know as they did describe the same.

Q. If these discovery shafts were 100 feet apart, more or less, why were they all recorded at the same distance from the monument?

Ans. I don't know that it was that either. We didn't used to record the way we do now; we didn't make any survey.

Q. Here paper shown witness Exhibit 2, and he is asked why did the record call for each shaft about 40 rods north of the discovery shaft from the Equator Lode, or substantially that language.

(Complainants' counsel objects on the ground that the exhibit shown witness does not contain such language, or substantially such language.)

Ans. Well, sir, I don't know why it called for it that way; it was not intended that way. We didn't measure, nor we did not have any survey, and for that reason it was put down different from what it is here.

Q. Did these four lie in the same general direction as near as could be ascertained?

Ans. I think not.

Q. How did they run?

Ans. Well, I didn't get the point of compass. I don't think they run the same part of the compass.

Q. How deep was the discovery shaft on the Senaca?

Ans. I couldn't give the depth; it was not very deep. It might have been 6 feet or more. I couldn't tell exactly.

163 Q. How far was the Senaca discovery from the Honenjoy discovery?

Ans. Well; as near as I can think the matter over it might have been 30 or 40 feet.

Q. How far was the Senaca from the Camadice?

Ans. Well, that might have been 40 or 50 feet; there was but little difference between it.

Q. How far was the Senaca from the Cayuga?

Ans. Do you mean the discovery shaft?

Q. Yes.

Ans. I think it was in the neighborhood of 75 or 80 feet, as near as I could judge.

Q. How deep was the shaft in the Senaca drift?

Ans. Well, we measured that, I think, if I recollect right, 32 feet.

Q. Where was that drift started from?

Ans. I think it was started from a little above the discovery of the Senaca.

Q. Who ran that Senaca drift?

Ans. Myself and Mr. Ames.

Q. How far was the mouth of that drift from the Cayuga discovery?

Ans. It might be 65 or 70 feet; I can't tell, it was so long ago; a good many years.

Q. Did that drift run under the Cayuga discovery?

Ans. I believe it did.

Q. How could it run under the Cayuga discovery and not be on the Cayuga vein?

Ans. Because it was at another point of compass.

Q. When that drift got under the Cayuga discovery was it on the Cayuga vein or not?

Ans. I think it was.

Q. When you had a shaft and drift on the Senaca, a drift 100

164 feet in length, as stated by McClellan, why did you state that your principal working development was on the Cayuga?

Ans. I say so now; the drift was started for the purpose of developing the Cayuga.

Q. Did you use a rod of any kind in tracing the supposed course of the Cayuga Lode?

Ans. No, sir; I did not; that was not the way I got the course of it.

Q. Did you use a rod in finding the vein in any manner, directly or indirectly, or in tracing its course, directly or indirectly?

(Complainants' counsel objects, as impertinent, immaterial, and irrelevant.)

Ans. I located where I sunk the shaft that way.

Q. Did you testify as a witness in the suit between the Compass and Square and Cayuga lodes in 1871 and 1872, either at the hearing in Denver or the hearing at Georgetown?

(Complainants' counsel objects, as immaterial.)

Ans. I don't understand that there was any suit in court; it was so long ago I don't know whether I testified or not.

Q. Did you not in that litigation testify that there were 4 veins or lodes in that Cayuga discovery?

(Complainants' counsel objects, as irrelevant and immaterial, not proper cross or redirect examination.)

Ans. I think not.

Q. Don't you know that in that litigation that that defense was made by your side?

(Complainants' counsel objects, as irrelevant, immaterial, and not cross-examination.)

Ans. I do not.

Q. Did you ever see Robert Bradford, of Washington?

Ans. No, sir.

165 Q. Was he not retained through his brother at Georgetown?

Ans. There was correspondence through his brother.

(Signed) WALTER N. WEBSTER.

Subscribed and sworn to before me this 11th day of April, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

There being nothing further presented in proof, the testimony is closed before me, as examiner, this 11th day of April, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

EXAMINER'S FEES.

Taking testimony, 246 folios, @ 20	$69 20
14 days' attendance, @ $3.00	42 00
Administering 17 oaths, @ 10	1 70
Marking and filing 16 exhibits, @ 10	1 60
Total due	$114 50

Received payment of

Examiner.

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(Signed) JOHN W. WEBSTER,
Examiner.

The following witnesses claimed their fees, which were allowed and ordered paid by U. S. marshal:

Walter N. Webster, 1 day's at., November 7, 1884	1 50
100 miles from Georgetown, @ 5	5 00
Walter N. Webster in rebuttal, 3 day's a., in April, '85	4 50
104 miles, @ 5	5 20
Erskine McClellan, 1 day' at., November 7, 1884	1 50
100 miles, @ 5	5 00
Erskine McClellan in rebuttal, 3 day's at., in April, 1884	4 50
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104 miles, @ 5	5 20
George W. Hunter, 2 days' at	3 00
100 miles, @ 5	5 00
Charles A. Martine, 2 days' at	3 00
100 miles, @ 5	5 00
Frank De La Mar, 1 day's at	1 50
260 miles, @ 5	13 00
Frank A. Maxwell, 1 day's at	1 50
100 miles, @ 5	5 00
Edward Rollandet, 2 days' at	3 00
Earnest Le Neve Foster, 2 days' at	3 00
100 miles, @ 5	5 00
Walter N. Webster, recalled January 2nd, 1884, 2 days' at., 1.50	3 00
100 miles, @ 5	5 00
Othenil R. Cannon, 1 day's at	1 50
William H. Lessig, 2 days' at	3 00

(Signed) JOHN W. WEBSTER,
Examiner.

(Endorsed:) No. 1145. The United States vs. The Marshall Silver Mining Company and the Colorado Central Consolidated Mining Company. Complainants' testimony. Filed Apr. 26, 1884. (Signed) Edward F. Bishop, clerk.

168½ And thereupon and on the same day came again the said John W. Webster, examiner as aforesaid, and filed in said court and in said cause his report of the testimony taken on behalf of the defendants herein. And the said report is in words and figures as follows, to wit:

Examiner's report of defendants' testimony.

UNITED STATES OF AMERICA,
District of Colorado, ss :

In the circuit court of the United States for the district of Colorado.

THE UNITED STATES
vs.
THE MARSHALL SILVER MINING COMPANY and the Colorado Central Consolidated Mining Company.

Testimony of defendants, taken before me as examiner in their behalf at my office, in Denver, commencing on Wednesday, the 2nd day of January, A. D. 1884. R. S. Morrison, esq., appearing as counsel for defendants and Andrew W. Brazee, esq., U. S. district attorney, appearing as counsel for complainants.

Defendants' testimony taken by consent of counsel this 2nd day of January, A. D. 1884, at my office in Denver; counsel for the respective parties being present.

Defendants produce GEORGE TURNBULL, a witness in their behalf, of lawful age, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is George Turnbull; age, 38 years; occupation, broker; and reside in New York City, New York.

Q. Do you know Walter N. Webster, the witness who testified this morning?

169 Ans. I do not.

Q. Did you ever live at Mill City? If so, when did you leave there?

Ans. I have lived at Mill City; I left there about August, 1878.

Q. How long before you began to negotiate for the purchase of the No. 5 Lode?

Ans. About one year.

Q. Did you ever have such a conversation with Walter N. Webster as he testified to this morning?

Ans. I never did.

Q. Where did you first hear of the existence of the so called Cayuga Lode?

Ans. Last spring, at Washington.

Q. Are you the party who bought the No. 5 Lode, with other property, from the Marshall Silver Mining Company?

Ans. I am.

Q. When did you buy it?

Ans. I think in November, 1879, or about that time, when the sale was consummated.

Q. What did you pay for it?

Ans. I don't recollect the exact price and conditions of sale, but the price mentioned in the deed was much more than the consideration paid for the property; I think it was about $75,000.00 less than mentioned in the deed, which would make it about $175,000.00 *dollars* paid for the property.

Q. What property did this pay for?

Ans. This bought the Marshall Silver Mining Company's property, including Lodes No. 5, No. 6, No. 7, No. 8, No. 10, with mill site, the William B. Astor claim, the Marshall tunnel, and other properties.

Q. Who did you have to examine the title when you bought it?

Ans. General B. M. Hughes.

170 Q. Did either General Hughes, your attorney, or any person else ever inform you of the claim of Webster, McClellan, and Rist on the Cayuga Lode or the alleged existence of that lode?

Ans. I never heard of such a property; did not know of such a property in existence.

Q. Do you know George W. Hall, of Georgetown?

Ans. I do.

Q. Did he have anything to do in negotiating the sale to you of any of the Marshall Company property?

Ans. He did not.

Q. With whom did you deal for that property in your purchase?

Ans. With Francis J. Marshall, and he sold it to me as president of the Marshall Silver Mining Company.

Cross-examination:

Q. When did you first go to live at Mill City?

Ans. In the summer of 1877.

Q. What business were you engaged in then?

Ans. Ore buying or sampling business.

Q. Anything else?

Ans. No, sir; with the exception of giving a little money to prospectors for prospecting purposes.

Q. When did you first commence negotiations which resulted in the conveyance to you of the property mentioned in Exhibit O?

Ans. About one year after leaving Mill City, which was about August, 1879.

Q. Had you in the fall of 1877 or spring of 1878 formed any intention of negotiating for such purchase?

Ans. No, sir; I had not.

Q. Are you able to recall all the conversations you may have had in the fall of 1877 or spring of 1878 with different persons in respect to their mining claims and troubles respecting the same?

171 Ans. No, sir; that would be too much of a burden to carry, to remember it all.

Q. Was the $175,000.00 *dollars* mentioned by you as paid for the property described in Exhibit O, paid in money or partly in money and partly in something else?

Ans. To the best of my recollection it was paid mostly in money, and F. J. Marshall subscribed individually to a small amount of the stock of the Colorado Central Consolidated Mining Company, to which it was afterwards sold. After the property was sold to the New York pool, consisting of Paul Lichtenstein, Mr. Wilcox, Charles C. Dodge, and others, Mr.

H. M. Holden arranged to take a certain amount of stock—I have forgotten the exact amount—for himself, George W. Hall, and F. J. Marshall; how much they took individually I never knew; this was to assist the Colorado Central Consolidated Mining Company in closing out their stock, and making it a full paid-up stock.

Q. About how much was paid in money by you, and to whom was the money paid, in consideration of the conveyance by Exhibit O?

Ans. I don't recollect; the transaction is so complicated that it would be very hard for me to itemize it.

Q. Are you able to state what the consideration for Tunnel Lode No. 5 was, in the sale to you?

Ans. I haven't the least idea, as the property was all put in, in one lot, not itemized.

Q. What was your connection with the Colorado Central Consolidated Mining Company at the time of its organization, and what has your relation to that company been since that time?

Ans. At the time of its organization I don't remember having any connection with it. Was made a director the first year, but don't remember of having anything to do with the organization of that company. I think I was in Denver when that company was formed.

172 Q. Were you a stockholder and one of the first directors of the company?

Ans. Yes, sir.

Q. Did you negotiate the purchase of the properties mentioned in Exhibit O with a view to the organization of the Colorado Central Consolidated Mining Company?

Ans. I sold the property to a pool who had that in view; I did not.

Q. Did you negotiate such purchase at the request of the gentlemen mentioned as constituting the New York pool?

Ans. No, sir; some of the pool I had never met until afterwards.

Q. Did you negotiate such purchase at the request of any one or more of the members of the New York pool?

Ans. No, sir.

Q. Did any of the members of the said New York pool contribute any of the money paid by you to the Marshall Silver Mining Company in consideration of the conveyance by Exhibit O to you?

Ans. All the preliminary money for the negotiation I paid myself; every dollar.

Q. How much was that?

Ans. I do not remember; the property was bought by me conditionally on time, and sold by me for cash.

Q. Who paid the unpaid balance remaining after the preliminary payment had been made?

Ans. General Charles C. Dodge and others.

Q. Mention the others.

Ans. I can't mention the others; I don't know how that was made up. After the first payment was made I turned the matter over to Charles C. Dodge to manage for me technically, although most of the money was raised by me personally to pay for the property.

Q. What official relation, if any, did General Charles C. Dodge
173 hold in respect to the Colorado Central Consolidated Mining Company at its organization or in its first board of directors or trustees?

Ans. He was made one of the first directors, as he was a large subscriber to the stock. He never held any office in the company other than director, and was on the board only a very short time.

Q. Did you personally examine patent of Tunnel Lode No. 5 before the conveyance to you?

Ans. I did not; I left it entirely to General Hughes as attorney.

(Signed) GEORGE TURNBULL.

Subscribed and sworn to before me this 2nd day of January, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

By consent of counsel the further taking of testimony on behalf of the defendants is continued until Monday, the 7th day of January, A. D. 1884, at the hour of ten o'clock a. m. at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance this Monday, the 7th day of January, A. D. 1884, at ten o'clock a. m., at my office in Denver, counsel for the respective parties being present, upon the motion of defendants the further taking of testimony is continued until further notice to be given by defendants to complainant'.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance upon notice given by defendants to complainants, and by virtue of the order of the court, the taking of testimony on behalf of the defendants was resumed at my office, in Denver, this Tuesday the 12th day of February, A. D. 1884, at ten o'clock a. m.

Counsel for the respective parties being present, defendants produce

174 FRANCIS F. BRUNÉ, a witness of lawful age, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Francis F. Bruné; age, 53 years; occupation, civil engineer and U. S. deputy mineral surveyor, and reside at Leadville, Colorado.

Q. Were you deputy U. S. mineral surveyor in December, 1872, and the year 1873 following?

Ans. I was.

Q. Did you as such surveyor in your official capacity make the survey *or* for Tunnel No. 5 Lode, in controversy in this suit?

Ans. I did.

Q. State whether in this application there was an amended survey, and if so, by what authority it was made.

(Complainants' counsel objects so far as it calls for authority, which authority must appear by writing.)

Ans. There was such survey made by the authority of the surveyor-general of Colorado sent to me in writing.

Q. What became of that writing, if you know?

Ans. I have not the order at present; it was either mislaid or destroyed. The order would be a private paper to any deputy, and for his private use; I have made search for the paper and couldn't find it; I think it is lost or destroyed, I don't know which.

Q. Have you examined the records of the surveyor-general's office, and, if so, what evidence do you there find showing that such an order was made for an amended survey, if any?

(Complainants' counsel objects as incompetent and improper; the records, or a certified copy thereof, are the only proper evidence of what they contain.).

175 Ans. I find that there is an amended plat of the Marshall Tunnel Lode No. 5 bound in book form at the surveyor-general's office, and certified to by the surveyor-general. I made the plat myself and recognize it as such.

Q. What was the difference between the original survey on the No. 5 and the amended survey?

Ans. None whatever in their exterior boundaries, only changing the area between the two; the amended survey contained the full area of the claim, whereas the original survey contained all except that portion taken out by the Cayuga Lode.

Q. Did you also make the survey for the Cayuga Lode?

Ans. I did.

Q. How, if you know, did the amended survey come to include the Cayuga area. By what means or authority was the amended survey allowed?

(Complainants' counsel objects as improper and incompetent, as calling for matter which can only properly appear from records and documentary evidence.)

Ans. By reason of the withdrawal of the applicants for patent of the Cayuga Lode at the Central City land office, and the subsequent order of the surveyor-general of Colorado to make the amended survey and plat in compliance therewith.

Q. State, if you know, whether Erskine McClellan, one of the applicants for patent on the Cayuga, was aware at the time of the withdrawal of the application and the concellation of the Cayuga survey.

Ans. I notified him of that fact (erased: * informed it was during the pendency of the publication of) after the withdrawal from the land office of the application for patent of the Cayuga Lode (erased: * within two or three weeks after the publication had been issued in the papers).

Q. How long have you been a deputy U. S. mineral surveyor in Colorado?

Ans. Ever since the year 1866, and have been such in Clear Creek County about 12 years.

Q. Since 1866, in round numbers, about how many surveys for patent on mineral lands have you made?

176 Ans. I don't know. There must be a good many hundreds of them.

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*This erasure and interlineation was made by the order of witness before signing. (Signed) John W. Webster, examiner.

Q. Was the matter of an amended survey a thing of rare or frequent occurrence?

(Complainants' counsel objects as immaterial.)

Ans. The amended surveys occurred occasionally from time to time as they are required by the department of the surveyor-general.

Q. Were they made by the same authority that ordered the original survey in this case?

(Complainants' counsel objects as leading, improper, calls for matter which must appear of record or by document.)

Ans. This amended survey was made by the same authority as the original.

Q. When an amended survey was made what was the practice of the office as to its including prior surveys interfering with it which had been cancelled?

(Complainants' counsel objects as irrelevant and immaterial.)

Ans. To allow the full area to the amended survey.

Q. In addition to your recollection of the facts of this case, have you made a personal examination of the plats and papers on file in the matter of No. 5 application in the surveyor-general's office?

Ans. I have.

52 Q. Do you either from your recollection or from such examination find anything out of the usual course of the land office at that time in the matter of such application on the No. 5 Lode?

(Complainants' counsel objects as improper, because it calls for a conclusion of the witness.)

Ans. I find nothing irregular from the usual manner of business as followed in the surveyor-general's office.

Q. State whether to your knowledge in the matter of the application on the No. 5 Lode, either in the land office or in the surveyor-general's office, or in the matter of the cancellation of the Cayuga Lode, any
177 monies were paid, offered, or promised, or bribes given, directly or indirectly, outside of the regular fees charged in such cases?

Ans. I don't know of any, or ever heard of any.

Q. State if, after the entry of No. 5 Lode, you made approved official surveys of any other lodes covering the ground once occupied by the cancelled survey of the Cayuga Lode. And, if so, how did the plats of such surveys stand to the Cayuga survey?

(Complainants' counsel objects as irrelevant, immaterial; it is improper inasmuch as it assumes that the Cayuga Lode had been cancelled. The approval could only appear by record:)

Ans. After the survey of Tunnel Lode No. 5 I made a survey of Tunnel Lode No. 6, which conflicted with the Cayuga Lode, and the full area of Tunnel Lode No. 6 was given to said last-named lode without reference to the Cayuga; also, I made a survey of Tunnel Lode No. 7, to which the above applies, meaning the full area was given to it without taking notice of the Cayuga Lode.

Q. Was the Cayuga Lode, after the amended survey of the No. 5, of which you have spoken, ever recognized by the surveyor-general's office as a subsisting survey, up to the time that you left Georgetown, in 1878, and removed to Leadville in your work as a deputy surveyor?

(Complainants' counsel objects as irrelevant, immaterial, and it is improper as calling for the conclusion of the witness.

Ans. I never knew that the Cayuga Lode was ever recognized in the surveyor-general's office since the withdrawal of its application for patent, or since I left Georgetown.

Q. At the time of the survey and amended survey on the No. 5 Lode, who was chief clerk in the surveyor-general's office, and when, if you know, did he die?

Ans. E. W. Cobb, and he died about two years ago, I think.

178 Cross-examination by counsel for complainant:

Q. When did you inform Erskine McClellan of the cancellation, or so-called cancellation or withdrawal, of the application for patent on the Cayuga Lode?

Ans. Shortly after the withdrawal of the application for patent of the Cayuga Lode. (Erased: *About two or three weeks after the notice of publication of Tunnel Lode No. 5 was given in the newspapers.)

Q. In what newspaper?

Ans. Published in Georgetown; either the Union or some other paper published in Georgetown; I don't remember the name of the paper.

Q. When was the first publication of that notice?

Ans. I don't know; it was in the spring of 1873, I think; I don't know the dates.

Q. Where were you and Mr. Erskine McClellan at the time you say you gave him the notice above mentioned? State particularly, as near as you can remember.

Ans. I met him on a street in Georgetown.

Q. Is that as near as you can recollect the place?

Ans. It was in the neighborhood of between Forbes' drug store and McClellan Hall.

Q. How are you able after eleven years, or nearly that length of time, to fix the time and place of this notice?

Ans. I was employed by McClellan to make the survey of the Cayuga Lode for patent about that time, and thought it a matter of interest to inform him of the proceedings in the land office at Central City.

Q. Were you so employed by McClellan before or after this supposed notice?

Ans. I was employed by him before I gave him notice.

Q. Did you survey the Cayuga for patent before the notice was given?

Ans. I surveyed the Cayuga before the notice was given.

Q. How long before?

179 Ans. I gave him notice some time during the spring of 1873 within two or three weeks after the withdrawal of the application of the Cayuga Lode in the central land office.

Q. How long before this notice had you surveyed the Cayuga for patent? State about the time, as near as you can recollect.

Ans. I surveyed the Cayuga Lode for patent about the beginning of December, 1872.

Q. How long was the beginning of December, 1872, before this supposed notice to McClellan was given by you?

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*This erasure and interlineation was made by order of witness before signing. (Signed) John W. Webster, examiner.

Ans. I could not say exactly; something more than three or four months.

Q. Is the withdrawal or cancellation, so called, mentioned and referred to by you on your direct examination, of the application for patent on the Cayuga Lode, the withdrawal of Joseph Rist, so far as his interest was concerned?

Ans. If my memory serves me right, Mr. Rist had an interest in the Cayuga Lode, and he made the withdrawal, and that is the withdrawal I referred to in my direct examination.

By agreement of counsel the further taking of testimony in this cause is hereby continued until Thursday, the 14th day of February A. D., 1884, at ten o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance this Thursday, the 14th day of February A. D., 1884, at ten o'clock a. m., at my office in Denver, counsel for the respective parties being present.

(The complainants' counsel objects to the alteration by erasure and interlineation of the answers of the witness Bruné to the first cross-interrogatory and a subsequent cross-interrogatory in the same respect, and insists that if the witness, on reflection, is satisfied that he has made a
180 mistake in respect to time or circumstance the proper way for such mistake to be corrected is by a statement in explanation at the end of his evidence, and not by erasure and interlineation of his evidence as given and written down by the examiner.)

(Signed) FRANCIS F. BRUNÉ.

Subscribed and sworn to before me this 14th day of February, A. D. 1884.

(Signed) JOHN W. WEBSTER, *Examiner.*

Defendants produce GEORGE W. HALL, a witness in their behalf, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is George W. Hall; age, 58 years; occupation, mining superintendent, and reside at Georgetown, Clear Creek County, Colorado.

Q. Are you the agent and manager of the Colorado Central Consolidated Company, defendants?

Ans. I am.

Q. How long have you been such agent?

Ans. Since the organization of the company.

Q. During that time have you been personally present at the mines overseeing its development?

Ans. I have.

Q. When did you first know the No. 5 Lode?

Ans. I became somewhat acquainted with the underground workings of the No. 5 about the year 1875.

Q. Was that in connection with the company known as the No. 5 Mining Company?

Ans. It was.

181 Q. Did the operation of that company have anything to do with the surface or surface workings of the No. 5 Lode, or to what part of the lode were they confined?

Ans. It had nothing whatever to do with the surface or surface workings. The portion of the mine that I was interested in then in connection with the No. 5 company was in the Marshall Tunnel, and below the tunnel level, and about 400 feet below the surface.

Q. When did you first hear of the existence of the so-called Cayuga Lode, or the claim of McClellan and Webster to part of No. 5 Lode, by that name?

Ans. I can't say positively when I did first hear of it, but to the best of my recollection it was after the patent in the Cayuga Lode was issued.

Q. Did you have any knowledge of it at the time when the Colorado Central Company purchased the property?

Ans. At the time the Colorado Central Company purchased the property I had not heard of the existence of such claim, nor for a long time after such purchase, and I did not know who the owners or claimants of the Cayuga were until some months after the patent was issued.

Q. Can you state in general terms what amount was paid by the Colorado Central Company for the No. 5 Lode? And if it was purchased along with other property without any specific price upon that particular lode, state as near as you can about what proportion in value that lode represented in the entire purchase.

Ans. I don't know that there was any separate value placed upon that particular piece of property, but was purchased with other lode claims, I think 15 in number, and about the total sum paid was in the neighborhood of four hundred thousand ($400,000.00) dollars. It was one of the principal lodes in that purchase.

Q. At the time of the purchase about how much money had
182 been expended in developing this No. 5 Lode?

Ans. The developments at that time, in 1879, it had probably cost somewhere from $25,000.00 to $50,000.00 *dollars*.

Q. Is that amount independent of the Marshall Tunnel?

Ans. I should judge that $50,000.00 *dollars* would cover all the developments, including the Marshall tunnel, although I did not make a thorough examination of the development of the No. 5 Lode at that time.

Q. Since the purchase of that property about how much have you expended in development of the No. 5 Lode?

(Complainants' counsel objects as immaterial.)

Ans. I believe it is about $30,000.00.

Q. To what number of feet in depth and to what extent in drifting was the lode developed prior to the commencement of this suit?

(Counsel for complainants objects as immaterial.)

Ans. The lode is opened to the depth of about 600 feet, and I believe there is several thousand feet of drifts run.

Q. Since you learned of this claim on the Cayuga Lode whether you have made any search to find the alleged developments on the Cayuga, what has been the result of that search?

Ans. I have been upon the grounds several times since the commencement of this suit, and had different parties with me to point out the discovery of the so-called Cayuga, but none of those who were with me could

point out the discovery, although they were men who were well acquainted with nearly all the workings on the mountain and were particularly in that locality, and who told me that they were working there at the time the Cayuga was discovered, but they could not find the discovery. The first that I learned anything about the discovery was through Mr. Foster, who was surveying the ground for the purpose of locating the discovery of the Cayuga, when he pointed out to me the place where the discovery shaft should be according to the field-notes. Soon after
183 Mr. Foster had located it, I found a man who told me he could locate it. He was working there at the time, on the Square and Compass Lode, which was very near where the discovery of the Cayuga was made. I got this man to go up to the place and point it out to the surveyors, which he did, and it proved to be the same place located by Mr. Foster as the discovery shaft. The place pointed out as the discovery has the appearance of there having been a shaft started or sunk a few feet deep, and is now caved in, so that it has the appearance of not having been more than 6 or 8 feet deep. No one in passing by or examining that particular place would have any idea that there had ever been a shaft sunk there. A few feet southeast from there it has the appearance of there having been a cross-cut tunnel run in, which was said to have been done by the claimants of the Cayuga, and I judge if run in to where the shaft was supposed to be would be about 30 feet or 40 feet in length, but is caved in so that it is impossible to tell how far it was run in.

(Complainants' counsel object to so much of witness's answer to last question as is hearsay.

Q. During the time you have been connected with either the Marshall or the Colorado Central Company have you been personally acquainted with McClellan and Webster, the Cayuga claimants?

Ans. I have been quite intimately acquainted with Mr. McClellan since about the year 1870. I have no recollection of ever meeting Mr. Webster until about the year 1881 or 1882.

Q. During that time did either one of those persons ever make any demand or offer to do any work upon the Cayuga, or to be let into possession thereof, or make any assertion of title thereto before the commencement of this suit?

(Complainants' counsel object as immaterial and irrelevant.)

Ans. Neither of them ever mentioned the Cayuga claim to me in any way up to within perhaps two months of the time of the commence-
184 ment of this suit or a little longer; there has been no work done on the Cayuga claim by Mr. McClellan and Webster or any other person since I became interested on Leavenworth Mountain, which was about 1878.

Q. State whether there is any appearance of work done at the Cayuga discovery or cross-cut within ten years or more, so far as the eye can discover.

Ans. It has not now, nor did not have the appearance in 1878, of there having been any work done for a long time prior to that time. I passed the supposed discovery shaft of the Cayuga very many times since 1878, up to the present time, as a portion of my work on the Colorado Central property caused me to pass this point several times during the week for a portion of the time since 1879.

Q. State whether there has been any enclosure, or other obstruction, which would have prevented the Cayuga parties going to work at that point, if they had desired so to do, during the time you have had personal knowledge of the premises.

Ans. None whatever. The discovery shaft is within a few feet of the wagon-road leading to the O. K. Tunnel.

Cross-examination by COUNSEL FOR COMPLAINANT:

Q. Did you pay any of the money, about $400,000.00 *dollars*, for the 15 lode claims purchased by the Colorado Central Company, mentioned by you?

Ans. I did pay quite a large sum of money.

Q. How much?

Ans. Several thousand dollars.

Q. How many thousand?

Ans. I paid twenty-five thousand dollars in money; that, however, included one other claim, which was consolidated with this property.

Q. What claim was that?

185 Ans. The Colorado Central Lode claim.

Q. Did that make the sixteenth claim, or was that one of the fifteen referred to?

Ans. That is one of the 15 referred to.

Q. How much did you pay for the Colorado Central Lode, if that was a part of the $25,000.00 *dollars* paid?

Ans. One hundred and twenty-five thousand dollars.

Q. Please state, if you personally know, who paid the balance of the four hundred thousand dollars purchase-price of the 15 claims, after deducting the $25,000.00 *dollars* paid by you, and what was such cash balance paid in.

Ans. It was all paid in money, but I don't know the parties who paid it.

Q. To whom was the four hundred thousand dollars purchase-price paid, and what was it paid in?

Ans. It was paid to the Marshall Silver Mining Company and to the owners of the Colorado Central Lode mining claim.

Q. Was not some portion of this four hundred thousand paid in stock of the Colorado Central Consolidated Mining Company?

Ans. A portion of it was paid in stock in this way: The company was organized in New York and a portion of the money paid in, when I was informed that it would be necessary, in order to get the sale completed at once, for myself and two others to subscribe one hundred thousand dollars in cash, which we did; so that instead of our drawing out that amount of money I took stock for the $25,000.00 *dollars*.

Q. How much stock, if any, did the two others referred to in your last answer take?

(Defendants' counsel objects as immaterial and impertinent.)

Ans. As I understand it, they took seventy-five thousand dollars in stock.

Q. Who were the two others?

186 Ans. It was Howard M. Holden and F. J. Marshall.

Q. Was any other stock, so far as you know, taken, directly or indirectly, by any other persons as part of the purchase-price?

Ans. None to my knowledge.

Re-examination by COUNSEL FOR DEFENDANTS:

Q. To what extent, since the Colorado Central Company bought the No. 5 Lode, has it been an ore-producing mine?

Ans. I don't think there has been two thousand dollars taken out of the No. 5 claim since the Colorado Central Company have had the property.

(Signed.) G. W. HALL.

Subscribed and sworn to before me this 14th day of February, A. D. 1884.

(Signed.) JOHN W. WEBSTER,
Examiner.

Defendants now produce ERNEST LE NEVE FOSTER, a witness on their behalf, who, being first duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age occupation, and place of residence.

Ans. My name is Ernest Le Neve Foster; age, 35 years; occupation, mining engineer and U. S. deputy mineral surveyor, and reside at Georgetown, Colorado.

Q. How long have you been a deputy U. S. mineral surveyor at Georgetown?

Ans. Some 4 or 5 years.

Q. How long have you been employed by the Colorado Central, and in what capacity?

Ans. I have been doing work for them ever since the company was formed.

Q. Have you been familiar during that time with the official surveys on Leavenworth Mountain, including the Cayuga survey?

187 Ans. I have been familiar with the several surveys located upon the mountain as shown by the surveyor-general's corrected plats and some from actual knowledge on the ground.

Q. State whether, in making an official survey, it is necessary to know the status of all prior official surveys as to whether they are subsisting as such or are cancelled.

Ans. It is necessary to know, as all existing surveys which conflict with the new one have to be shown.

Q. Have you made any official survey or surveys covering any part of the ground now claimed by the Cayuga?

Ans. I have made but one, and that recently.

Q. During all the time you have been a deputy U. S. surveyor, how has the Cayuga survey before the issue of the patent stood on the corrected plat by which all subsequent surveys are made?

(Complainants' counsel objects, as immaterial, improper, and irrelevant.)

Ans. It was not shown upon the plats.

Q. Have you made any survey upon the ground to ascertain the lines of the Cayuga survey and its conflicts with or relation to the No. 5 Lode and other lodes or official surveys covering the same part of the ground?

Ans. I have.

Q. State, first, its conflict, if any, with the No. 5 Lode, giving the lines

and area of conflict, and produce any plat you may have showing the same.

(Complainants' counsel objects, as immaterial, irrelevant, and incompetent; the defendant companies are estopped from showing any different lines or area than that expressed in the papers embraced in and accompanying the application for patent of the Tunnel Lode No. 5, as shown in Exhibit C.)

Ans. I can't give the conflict exactly, but I can give it approxi-
188 mately. There are two separate conflicts; the first begins at corner 3 of the Cayuga Lode, and runs southwesterly along the south line of the Cayuga about 48 feet; thence along the north line of Tunnel Lode No. 5 northeasterly about two hundred and thirty-five (235) feet; thence southeasterly along the east end line of the No. 5 Lode about thirty-five feet; thence southwesterly along the south line of the Cayuga Lode about one hundred and eighty-two (182) feet to the place of beginning. The second conflict begins at corner 2 of the Cayuga, runs thence southwesterly along the south line of the Cayuga about 4 feet; thence northeasterly along the north line of the No. 5 Lode about one hundred and fifty-five (155) feet; thence southwesterly along the south line of the Cayuga Lode about one hundred and fifty-two (152) feet. It consists of a triangle about one hundred and fifty-three (153) feet long, about four feet wide at the widest place, forming a point at the east end; the area of the latter one is about five one-hundredths of an acre, and of the former about one-eighth of an acre.

Q. Is that the result of an actual survey upon the ground?

Ans. It is.

Q. Were you able to locate the discovery of the Cayuga, and what, if anything, did you find there?

Ans. I located the discovery shaft from short official corrections from well established points on the mountain, and which point was afterwards pointed out to me as the correct place for the Cayuga discovery shaft. There was a shallow hole on the surface, which had caved together, and there was a tunnel which had been driven in some 30 or 40 feet under and to it; the tunnel being caved together, it was not possible to examine it or survey it; I can't say positively that the tunnel was driven to the shaft.

Q. Where did this discovery stand with reference to the conflicting area between the No. 5 and the Cayuga?

189 Ans. The discovery was not upon the conflicting ground.

Q. How far was this discovery from the center line of the No. 5 Lode?

Ans. From 35 to 40 feet northwesterly of it.

Q. What other surveys did you find conflicting with the Cayuga Lode, as patented? I mean surveys which have been patented or entered for patent since the date of the alleged cancellation of the Cayuga survey in May, 1873, and before the entry of the Cayuga patent.

(Complainants' counsel objects on the ground that the question assumes witness knows of other surveys, and has verified them, and also knows what ground has been patented, and calls for irrelevant, immaterial, improper, and inadmissible parole evidence.)

Ans. There is the Tunnel Lode No. 6, survey lot No. 248, which is

patented; Tunnel Lode No. 7, survey No. 274, which is patented; the Gates Lode, survey No. 399, which is patented; the Reynolds Lode, survey No. 515, which is patented; the Halcyon Lode, survey No. 605, which is patented; the Cuba Lode, survey No. 259—I am not positive whether that is patented or not, but I believe it is. The Coulter Lode, survey No. 530, which I believe also to be patented; the Standard Lode, survey No. 1483, which is patented; the Colorado Central Lode, No. 261, which is patented; the Creole Lode, survey 1556, for which there is a receiver's receipt, and I think patent is issued, I am not sure; also the Argentine Lode, survey No. 1291, which I believe also is patented. I believe that covers all the lodes which are in conflict with the Cayuga.

Q. Do the official surveys upon which the lodes you have mentioned were patented share the Cayuga survey so as to exempt it, or do they share it as parcel of the several claims patented over it?

(Complainants' counsel objects for same reasons last-above stated.)

Ans. In every case, so far as I know, the Cayuga area has not
190 been exempt from the general surveys before mentioned.

Q. Do you mean that the United States had sold the Cayuga ground to the various patentees of the several lodes you have mentioned before the same ground was patented again to the Cayuga parties?

(Complainants' counsel objects as irrelevant, immaterial, and improper; that the sales made by the United States cannot be shown by parole, and the question is leading.)

Ans. That is exactly what I mean.

Q. What proportion, if any, of the total area of the Cayuga Lode was left unpatented at the time of its entry by the Cayuga parties?

(Complainants' counsel object, as wholly immaterial.)

Ans. I do not think it would exceed two-tenths of an acre; the full claim of the Cayuga would have been about 3 & $\frac{3}{10}$ths acres.

Q. Which, if any, of the patented lodes you have mentioned covers the discovery shaft of the Cayuga?

(Complainants' counsel objects as immaterial.)

Ans. The Tunnel Lode No. 6, survey No. 248.

Q. When was Tunnel Lode No. 6 patented?

(Complainants' counsel objects, that the time can only be shown by the patent.)

Ans. I don't know the exact date. It must have been issued about 1873 or 1874. The publication was made in the early part of 1873.

Q. During the time you have been familiar with this ground, has any work or improvements been done upon its by any parties purporting to represent the Cayuga Lode?

Ans. None to my knowledge.

Q. How many location certificates or records do you know of being made upon the so-called Cayuga discovery shaft?

(Complainants' counsel objects as immaterial.)

Ans. I know of four records which were made at the same time
191 by the same parties in almost identical words, one of which was the Cayuga. All of said records locating their discovery shafts at the same point, and, therefore, apparently being four records from the one shaft; I can't remember the full names. One, I believe, was the Camadice, another the Cayuga; I can't remember the other two.

Cross-examination:

Q. Are you employed by the Colorado Central Consolidated Mining Company; and, if so, in what capacity and how long have been so employed?

Ans. I am not employed by them in any other capacity than as before stated.

Q. In what capacity, if any, were you employed by the Marshall Silver Mining Company, and when did such employment commence and when did it cease?

Ans. I was employed as secretary and treasurer of that company in January, 1879, until the sale of the property to the Colorado Central Company; since then I have charge of their books and papers up to the present time, though I can't say that I am in their employ at the present, as they employ no one at the present time.

Q. Did you make field-notes or any memoranda of the course and distance of objects by means of which you claimed to have located the place of the discovery shaft of the Cayuga Lode; and, if so, have you such notes or memoranda with you at this time?

Ans. Yes, I made notes, and they are mostly shown upon the plat I have here.

Q. Now state, if you please, the data from which you claim to have located that shaft in such a way that a competent surveyor going upon the ground could verify the result which you claim to have arrived at in respect to the place of that shaft.

Ans. He could begin at the bearing tree, to corner 3 of survey No. 204, of the Hidden Treasure Lode, from the official notes of which he can
192 find the position of corner 3 of that survey; from there he can run the south line of that survey to corner No. 4 of same survey; thence north 86° 12′ west $63\frac{6}{10}$ feet, which will take him to corner 4 of the Saco Lode, survey No. 229; thence south 34° 45′ west $171\frac{1}{2}$ feet to corner No. 6 of the Cayuga Lode, survey No. 231; thence south 23° east 25 feet will take him to the center of that shaft, or he can begin at the Equator deep shaft; thence on a course north 21° east 410 feet to corner 1 of the Hidden Treasure Lode, from which he can find corner 4 of the Hidden Treasure Lode, survey No. 204, by following the official notes of that survey, from which point he can find the Cayuga shaft as above described; or you can begin at corner 5 of Tunnel Lode No. 7, survey No. 274, and run thence south 42° 10′ east $142\frac{3}{10}$ feet, which will bring him to corner 5 of Tunnel Lode No. 5; thence north 10° 10′ east $90\frac{6}{10}$ feet, which will bring him to corner 6 of the Cayuga, where the discovery is found as above given. Also from the discovery of the Reynold's Lode north 4° 20′ west 57 feet takes you to corner No. 5 of Tunnel Lode No. 5, from which the Cayuga shaft is found the same as above described.

(Signed) ERNEST LE NEVE FOSTER.

Subscribed and sworn to before me this 14th day of February, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

Defendants also produce BYRON E. COX, a witness on behalf of defendants, who, being duly sworn by me to testify the truth, the whole truth,

and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Byron E. Cox; age, 48 years; occupation, miner and prospector, and reside at Silverton and Rico, Colorado.

Q. For how many years have you been a miner and prospector
193 in Clear Creek County?

Ans. I prospected and mined there from the spring of 1865 to the summer of 1872.

Q. Did you know the Cayuga Lode, on Leavenworth Mountain?

Ans. I knew a prospect hole there that was called the Cayuga.

Q. Was that prospect hole the same hole which McClellan and Webster claimed as the discovery shaft on the Cayuga Lode?

Ans. I never knew of but one prospect shaft there by the name of the Cayuga, and I suppose it was.

Q. Was that hole or shaft sunk in, and what did it disclose?

Ans. Sunk through the sand into the bed rock; I failed to discover anything there in the shape of a lead; the shaft was sunk into the granite.

Q. How often have you seen that shaft?

Ans. I was there several times, I could not say how often; I never was down in the hole but once.

Q. Did you know Walter N. Webster?

Ans. I knew a man there by the name of Webster who claimed this hole.

Q. Did you ever inform him that there was no lode in that shaft, and what, if anything, did he say about it?

Ans. I have made light of it, and jested with him as much as to tell him that there was no vein there. He would get indignant over it, as a matter of course.

Cross-examination:

Q. When was you down in this hole you refer to?

Ans. I could not say whether it was in the summer of 1867 or 1868; somewhere along there; I don't exactly remember.

Q. What induced you to go down into the hole?

Ans. To see whether there was a vein there.

Q. Who was present at the time, if any one?

Ans. Mr. Caleb Stowell. We were prospecting together at the time.

194 Q. Was any one at work there?

Ans. No, sir.

Q. When you jested with Webster about the hole did he claim that he had discovered a vein in it?

Ans. He claimed he had a vein.

Q. At the time you went down into the hole, how long had you been prospecting for mineral veins, lodes, ledges, or deposits?

Ans. I had been making it a business since 1859, or a specialty.

Q. Are you able from recollection to state whether all or any, and if any, what, prospect holes which you went down into as long ago as 1867 or 1868 contained mineral and which did not?

Ans. Some of them, I presume, I might name; I don't suppose that I could remember all the shafts I went into.

Q. Now what was there if anything in the circumstance of your going into the so-called Cayuga prospect hole which enables you to now state that you didn't see any mineral in it?

Ans. By jesting with Mr. Webster about it, and I felt sorry to see a man digging where I didn't think there was anything.

Q. How did the defendants in this case, or their agents or counsel or lawyers, find out that you could testify so long after your being in that hole what the result of your examination or conclusion was?

Ans. I was asked the question here by General Marshall within the last 3 or 4 or 5 weeks, and I told him what I remembered in regard to the matter what I have sworn to.

(Signed) BYRON E. COX.

Subscribed and sworn to before me this 14th day of February, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

195 By consent of counsel the further taking of testimony is continued until Friday, the 15th day of February, A. D. 1884, at ten o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this, Friday, the 15th day of February, A. D. 1884, at ten o'clock a. m., the counsel for the respective parties being present, the defendants produced ALBERT E. CHASE, a witness in their behalf, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Albert E. Chase; age, 36 years; occupation, mining engineer and deputy U. S. mineral surveyor, and reside at Georgetown, Clear Creek County, Colorado.

Q. Did you, along with Mr. Foster, make the survey on which this map Exhibit I is based?

Ans. I did.

Q. How much conflict in area do you find by actual survey between the Cayuga Lode and the No. 5?

(Complainants' counsel objects on the ground stated to a similar question put to the witness Foster.)

Ans. I can only answer approximately. I think the conflict contains an area of between 5,000 and 6,000 square feet, although I do not wish to state it positively. The conflict is in the vicinity of one-eighth of an acre.

Q. Do you believe that this map shows the Cayuga Lode as originally staked on the ground and its true relation to No. 5 Lode?

(Complainants' counsel objects, as immaterial, irrelevant, and improper.)

Ans. I believe the map shows the lodes practically as they were originally staked.

196 Q. How do you account for the fact of the Cayuga patent or the plat in the Cayuga patent when collated with the plat in No. 5 showing a greater conflict than you find by survey?

(Complainants' counsel objects as immaterial.)

Ans. I account for it in this way. From an angle corner of each of the tunnel lodes a bearing is given to the mouth of the Marshall Tunnel; on the surveyor-general's plats, the Marshall Tunnel Lodes are platted according to this official connection with the mouth of the Marshall Tunnel; by actual measurement on the ground, these distances are found to be shorter than the distances given in the official notes, the effect is that on the corrected plats in the surveyor-general's office the tunnel lodes appear to be further northwest or up the hill than they are actually found on the ground by about 20 feet.

Q. Had this error in the corrected plat been discovered before the commencement of this suit?

(Complainants' counsel objects, as immaterial and irrelevant.)

Ans. It had not. I called the attention of the clerk in the surveyor-general's office to the discrepancy this morning; what I mean is, that it had not been discovered in the surveyor-general's office nor had I any knowledge of the error.

Q. Are you familiar with the official surveys on Leavenworth Mountain which comprises the ground described in the Cayuga patent?

Ans. I am, with many of them by actual survey, and with others from official notes.

Q. How long have you been U. S. surveyor in Georgetown, Clear Creek County?

Ans. Nearly four years.

Q. During that time, and up to the issuance of the Cayuga patent was the Cayuga survey recognized in the surveyor-general's office as a subsisting or as a cancelled survey?

197 (Complainants' counsel objects, as irrelevant and immaterial.)

Ans. It was recognized as a cancelled survey.

Q. How many patents, giving the names of the lodes and the numbers of the survey lots, has been issued upon surveys approved over the Cayuga ground without any recognition of the Cayuga survey between May, 1873 (the date we allege the cancellation of the Cayuga survey), and the date of the entry of the Cayuga Lode?

(Complainants' counsel objects, as immaterial, irrelevant, improper, and as not being the best evidence.)

Ans. Application for patent on the following-named lodes have been made, and to many of them patents have been issued, and on others receiver's receipts have been obtained. I can't testify definitely as to status of many of them:

The Lycurgus, lot No. 1681: Receiver's receipt.
The Standard, lot No. 1473: Patent issued, I think.
Tunnel Lode No. 7, lot No. 274: Patent issued, I think.
Tunnel Lode No. 6, amended No. 327: Patent issued, I suppose.
Coulter Lode, lot No. 530: Don't know its status.
The Halcyon Lode, lot No. 605: Don't know its status.
Reynolds Lode, amended No. 515: Patented, I think.
Cuba Lode, lot No. 259: I suppose to be patented.

Creole Lode, lot No. 1556: Can't testify as to its status.

Argentine Lode, lot No. 1291: Am uncertain as to whether patent has issued.

The Gates Lode, lot No. 399: I believe it to be patented.

Colorado Central, lot No. 261: Is patented, I think.

And Tunnel Lode No. 5, amended survey No. 326, original No. 247: Patented, I believe.

I believe the above list includes all the lodes that the Cayuga can conflict with.

Q. What one of these lodes takes the Cayuga discovery and which takes the balance of the alleged improvements on the Cayuga Lode?

198 Ans. Tunnel Lode No. 6 takes the discovery of the Cayuga, and Tunnel Lode No. 5 the remainder of the alleged improvements.

Q. Was there anything on the grounds visible at that time showing the existence of any such pretended claim as the Cayuga Lode in the way of notice, stakes, buildings, or workings?

There is no notice; no boundary marks could be found at the place, where the discovery ought to be, according to relocation by Deputy Foster and myself, is the pit now nearly filled with dirt and snow, and at a point about 30 feet southeasterly from the presumed discovery of the Cayuga Lode is what appears to be the mouth of the tunnel. The tunnel is caved in, and could not be surveyed or examined.

(Signed) ALBERT E. CHASE.

Subscribed and sworn to before me this 15th day of February, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

Defendants also produce FRANCIS J. MARSHALL, a witness in their behalf, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Francis J. Marshall; age, 67 years; occupation, mining and mining broker; and reside in Denver, Arapahoe County, Colorado.

Q. Have you been president of the Marshall Silver Mining Company during its entire existence?

Ans. Yes, sir.

Q. Did that company run the Marshall Tunnel?

Ans. Yes, sir; it did.

Q. At what depth in that tunnel and what year was the No. 5 Lode discovered?

199 (Complainants' counsel objects as immaterial and irrelevant.)

Ans. It was discovered, I think, in the year 1870, and recorded in 1871. I don't remember the day. The depth about 400 feet, perhaps a few feet less.

Q. Did you follow that discovery with an application for patent?

Ans. I did.

Q. About the same time were you aware of an application for patent on the Cayuga Lode?

Ans. I was.

Q. When did you first know of the alleged discovery of the Cayuga Lode, and state what in fact existed in such discovery?

Ans. In 1867, while working the discovery shaft of the Compass and Square Lode, with two men employed in working said shaft, Martin Barnes and Samuel Burkhardt, Mr. Webster and Ames, Walter N. Webster and I, James Ames, commences sinking a prospect hole about 100 or 120 feet northeast of the discovery on the Compass and Square, and very nearly in the direction of the course of the Compass and Square running northeast. I decided to watch their work every day, in order to ascertain whether the hole they were digging would interfere with the Compass and Square Lode; the Compass and Square Lode not having been drifted on at that time to ascertain just where it ran. I visited the hole they dug there almost every day, for the purpose above stated. They sunk this hole down somewhere from 15 to 20 feet deep. It was sunk strictly in country rock. Finding no lode nor appearance of a lode nor vein matter they quit and took their tools out and left the mountain. This was in 1867. I never saw or heard of them any more in that vicinity or anybody connected with that hole until the summer of 1871, when Mr. Webster and Ames came up onto the mountain and commenced to tunnel below the Cayuga hole, which they claimed as such, and below or on the opposite side of the Compass and Square Lode, probably about 20 feet
200 below. They call it the Cayuga Tunnel, and said they were going to run it to connect with the Cayuga shaft. Their course would cross the Compass and Square diagonally. They run the tunnel until they struck the Compass and Square vein.

Q. State whether this tunnel was run until it reached the Cayuga hole, or whether it stopped short, and whether it cut any other vein and what then took place between your company and the Cayuga parties.

Ans. It was not run to the Cayuga hole, but stopped its course when it struck the Compass and Square vein. The distance from where they struck the Compass and Square vein to the Cayuga in a diagonal direction was about, I should think, probably 35 feet, as near as I can remember. They then commenced working on the Compass and Square vein, drifting west towards the discovery shaft of the Compass and Square and taking out ore, and took out probably about $800.00 on their drift. I, for the Marshall Silver Mining Company, was drifting on the vein east from the Square and Compass discovery shaft to meet them for the purpose of proving the true situation of the workings of the respective parties on the Square and Compass Lode. The two parties with their drifts met at a point immediately opposite the Cayuga shaft, or in other words, the Cayuga shaft stood at right angles from the point where the two drifts came together, and the distance of about 20 feet from that point, the Marshall company having put in the last shot, did break through and connect the two workings on the vein that shot threw rock into the Cayuga drift, on the Compass and Square; I mean the drift run by the Cayuga parties to make it plain. The Cayuga parties then withdrew, took their tools and went home. There was no fighting, no force or arms used nor threatened to be used on that occasion, as stated by Mr. McClellan in his evidence.

Mr. McClellan himself was not present when it occurred. The Cayuga parties were represented by Mr. Webster, and the Marshall parties by myself, and we were both present. No conversation was had between
201 the men working on either side except between Mr. Webster and myself. A few days after that an injunction was served on the Marshall Silver Mining Company by the Cayuga parties, which stopped us from work at that point. I think some 1 or 2 months after that I procured the evidence of some 9 or 10 witnesses to establish all the facts in the case, and Judge Belford proceeded to hear the case in chambers, on motion to dissolve the injunction. The injunction was heard by him in Denver about the 28th of November, 1871. The injunction was dissolved, the Cayuga parties left the premises at once. By virtue of the proceedings of the judge, the Marshall company took possession of the ground and proceeded to work it.

(Complainants' counsel objects to so much of the answer of the last question as relates to the legal proceedings, and the consequences and effect thereof, as being immaterial and irrelevant, also as being incompetent and not the best evidence of such proceedings.)

Q. Was that the last work done on the so-called Cayuga Lode?

Ans. That was the last work done by the Cayuga parties.

Q. State what you know of the withdrawal by Rist from the Cayuga application.

Ans. After I brought the adverdse suit against the Cayuga parties, Mr. Rist came up from the valley to Georgetown to see me in reference to it, and said he had never seen the property and did not know anything about the facts, and asked me if I would not go to any further cost or expense in the matter until he could investigate for himself; that he would go onto the premises with 2 or 3 miners that he could get on the mountain and look it all over and decide what he would do. I accepted his proposition. Subsequent to that time, within a few days—3 or 4—Mr. Rist came to my office in Georgetown, said he had investigated the matter to his thorough satisfaction, that they had no lode in the shaft, and that he didn't propose to have any lawsuit about it, so far as he was concerned,
202 and he asked me if I would dismiss the suit so far as he was concerned if he would withdraw the application from the land office. I replied to him that if he withdrew it there would be no cause of action and therefore it would stand dismissed so far as he was concerned. If it was necessary for me to do anything further about it I would do so in the way of having it dismissed. He then said he would go, or have his attorney go to the land office and withdraw the application. I never saw Mr. Rist afterwards from that day to this. He did not withdraw the application for several weeks after that date; I don't remember how long.

Q. Who did the proposition to withdraw the application of the Cayuga patent come from, yourself or Mr. Rist?

Ans. It came from Mr. Rist, on the conditions as I have before expressed it.

Q. Was any money or other consideration paid to him?

Ans. No, sir.

Q. What did you then do with the No. 5 application?

Ans. After withdrawal by Rist and the cancellation of the survey in

the surveyor-general's office, and the expiration of the 30 days allowed for appeal, I then proceeded to make the entry, and continued the business to obtain a patent of the No. 5 just as though the Cayuga question had never been raised.

Q. How was the amended survey on the No. 5 procured?

Ans. After the withdrawal by Rist I was at the Central City land office, had a conversation with officers in reference to the matter and with an attorney at law who I often consulted; I think it was Judge Gorsline. It was decided to ask the surveyor-general for an order to make an amended survey, plat and field-notes. Mr. Bruné, who always attended the matters of obtaining patent for the Marshall company, was requested by me to communicate with the surveyor-general on the subject and ask for an order for an amended survey, field-notes, &c., disregarding the
203 Cayuga. Mr. Bruné wrote the letter and showed it to me, got the order from surveyor-general and showed it to me. I paid him the fees of the surveyor-general's office required, and proceeded to do the work. He did the work according to the order and furnished me a copy of the amended diagram, which I in person and with a witness, Thomas R. Owen, placed the same at the discovery shaft of the No. 5 Lode, which was in less than 100 feet of the Cayuga shaft.

Q. In procuring this order was any money paid to any officer of the land office or in the surveyor-general's office or other consideration over and above the regular fees?

Ans. Not a cent.

Q. Was there any concealment of papers or of any part of the transaction, so far as you know of?

Ans. None whatever.

Q. Was the entry of the No. 5 Lode for patent publicly known?

Ans. As much so as any other lode I ever entered, and more so, on account of its being connected with the Cayuga and the questions discussed in reference to it.

Q. Was Mr. McClellan aware of the fact that your No. 5 survey had been amended and the Cayuga excluded therefrom?

(Complainants' counsel objects, as calling for conclusion of witness and not for a fact.)

Ans. I think so, for the reason that a Mr. Bradford, spoken of by Mr. McClellan in his evidence as having been employed to look up the legality of the proceedings in reference to the withdrawal of the Cayuga by Mr. Rist, came to me and said that he *ahd* been employed by Mr. McClellan and that he and his brother were at work at it, looking it up, during which conversation Mr. Bradford and myself became quite angry and disputed to some extent in reference to the facts, and I explained to him how it occurred.

204 (Complainants' counsel objects to so much of this answer as relates to the conversation with Mr. Bradford.)

Q. Do you find, on personal inspection in the surveyor-general's office, two letters in the shape of a request for an amended survey, and in whose handwriting are they?

Ans. I do. One in my own and the other in the handwriting of Wm. A. Hamill. I do not find the letter written by Mr. Bruné.

Cross-examination by COUNSEL FOR COMPLAINANT:

Q. Are the letters referred to in your last answer the same letters introduced on behalf of complainant in this case?

Ans. I think they are, but am not certain.

Q. Is Exhibit F, now shown you, a copy of the letter written by you and referred to in your answer to the last direct interrogatory?

Ans. This is the copy of the letter which I think is in the handwriting of Mr. Hamill and signed by me.

Q. Is Exhibit G, now shown you, a copy of the other letter referred to in your answer to the last direct interrogatory?

Ans. I think this is a copy of my letter to the surveyor-general.

Q. When and where did you have the conversation with Bradford which you have referred to in your direct examination?

Ans. The place was in my office in Georgetown; the time was, as near as I can remember, perhaps two or three weeks after the withdrawal by Rist of the application for the Cayuga patent. It might have been a month afterwards; I don't pretend to remember the date accurately.

Redirect examination:

Q. Do you know of any ruling in any case in the land office prior to the ruling in the Cayuga and No. 5 Lode, in which the refusal of one party to act in an application for patent was held to bar the entire application.

205 (Complainants' counsel objects, as irrelevant, immaterial, also improper, because it calls for parol evidence of what must appear in writing.)

Ans. The ruling of the land office at Central City was not to permit any person to make an entry or proceed to patent unless they produced an abstract of title, showing the title to be good and perfect within the applicant. This ruling was applied to myself for the Marshall Silver Mining Company in the case of an application for a patent to the Compass and Square Lode, especially to the east half of said lode, wherein John Turck owned one-eighth interest and the Marshall Silver Mining Company seven-eighths. The land office refused to allow the entry or to proceed any further than a mere advertisement and the filing of the papers, because Turck, who owned an undivided one-eighth, refused to join in the application.

(Signed) FRANCIS J. MARSHALL.

Subscribed and sworn to before me this 15th day of February, A. D. 1884.

(Signed) JOHN WEBSTER,
Examiner.

Defendants now produce JAMES W. O'BRYAN, a witness in their behalf, who being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is James W. O'Bryan; age 40 years; occupation miner, and reside at Telluride, Colorado.

Q. How many years did you mine in Clear Creek County?
Ans. About 11 years.
Q. Do you know the so-called Cayuga Lode in controversy in this case?
Ans. I am acquainted with the shaft.
Q. During what year were you familiar with the shaft?
206 Ans. The latter part of 1872, 1873, and the fall of 1876.
Q. Did you ever examine that shaft?
Ans. Yes, sir; frequently.
Q. What, if anything, did that shaft disclose in the way of lode or vein material?
Ans. To the best of my recollection, there was no sign of a lode in the so-called discovery shaft.
Q. What was your object in examining the shaft?
Ans. Looking for ore.

Cross-examination by COUNSEL FOR COMPLAINANT:

Q. When did you examine the shaft of Cayuga for the purpose of taking a lease?
Ans. The latter part of 1876 more particularly.
Q. When did you examine it looking for ore?
Ans. Some time latter part of 1876.
Q. At that time did you have any lease of this ground, and if so, from whom?
Ans. I had a lease from General Marshall for all the ground that I might wish to work lying east of the Square and Compass discovery shaft, for something like 400 feet in length, east. My workings were all near the surface.
Q. Did the ground so leased include the discovery shaft of the Cayauga referred to by you?
Ans. The Cayuga shaft was not mentioned in my lease.
Q. Was it within the 400 feet covered by your lease?
Ans. Yes, sir.
Q. Did you clean out the bottom of that shaft?
Ans. No, sir.

Re-examined:

207 Q. Did it need cleaning to show that there was no vein there?
Ans. No, sir.

Recross-examined:

Q. How deep was this shaft at the time you examined it in 1876?
Ans. About 17 feet from the surface.
Q. Had it caved any, so far as you were able to judge?
Ans. But very little.
(Signed) JAMES W. O'BRYAN.

Subscribed and sworn to before me this 15th day of February, A. D. 1884.
(Signed) JOHN W. WEBSTER,
Examiner.

Defendants now produce WILLIAM F. KELSO, a witness in their behalf, who, being duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is William F. Kelso; age, 48 years; occupation, prospector and miner, and reside in Denver, Arapahoe County, Colorado.

Q. For how many years did you mine in Clear Creek County?

Ans. Since 1860.

Q. How long have you known the Cayuga Lode, so called, on Leavenworth Mountain?

Ans. I was at the shaft in 1871 or 1872—that winter.

Q. What, if anything, did that shaft show in the way of a lode?

Ans. It didn't show anything.

Q. What was it sunk in?

Ans. Country rock.

Q. Did you know the other workings driven by the Cayuga parties?

Ans. I did.

208 Q. Did these workings connect with the Cayuga discovery?

Ans. They did not.

Q. On what lode were these other workings driven?

Ans. On the Compass and Square Lode.

Q. Was the drift on the Compass and Square driven into the Cayuga workings?

Ans. They were connected.

Q. Describe how the development was made to show that the Cayuga parties were working on the Compass and Square vein.

Ans. I had a lease on the Compass and Square east of the discovery, taking in and measuring that ground. I was working from a shaft west of the drift on tunnel driven by the Cayuga parties. I found the shaft with loose rock thrown into it, which I took out, and finally came to a solid wall built up; took it down, and got into the Cayuga workings on the Compass and Square.

Q. Was the shaft you refer to the Square and Compass shaft?

Ans. The shaft sunk on that lode, and from there it was drifted on the vein into the Cayuga works.

Q. Was this after the injunction?

Ans. Immediately after the injunction was raised, which was on the Compass and Square.

Q. Was there any force used?

Ans. There was none.

Q. Were there any parties working on the Cayuga at that time?

Ans. I think not; there were parties up there.

Q. How long did you remain and work that ground under your lease?

Ans. I can't state exactly; probably 3 or 4 months.

Q. Was there any work done by the Cayuga parties during that time?

Ans. I don't think there was.

Q. What was the total amount of work done by Cayuga parties

209 besides the discovery shaft?

Ans. Probably 15 or 20 feet of drifting after they struck the

Compass and Square Lode. I don't exactly recollect the length of the cross-cut; it would not exceed 50 feet, and a shaft about 20 feet deep was sunk on the Compass and Square.

Cross-examination:

Q. What did you go into the Cayuga discovery shaft for in 1871 or 1872?

Ans. To see if there was any ore there or a crevasse, or what there was there.

Q. With what object in view, and at whose request, did you go there?

Ans. I had heard that they claimed the ground I had leased there as the Cayuga Lode.

Q. Then you went there in an interest adverse to the Cayuga?

Ans. I don't think so.

Q. You had not leased of them, had you?

Ans. No, sir.

Q. Who had you leased from?

Ans. I leased from General Marshall.

Q. Did you understand that he claimed adversely to the Cayuga?

Ans. He claimed the ground that I was on, which opened to the discovery shaft where I was at work on the Compass and Square.

Q. Were the Cayuga parties working, or had they worked on what you call the Compass and Square Lode, claiming it as the Cayuga?

Ans. That was my understanding.

Q. And you drove your workings into the Cayuga workings, didn't you?

Ans. Yes, sir.

Q. In running your workings you say you came to a solid wall. Was it an artificial wall?

Ans. In the first place, there was a lot of loose rock thrown clear back into the shaft that I was working from, and thrown in as compact
210 as they could be from there onto the rear the shaft, and they had built up a solid wall there to keep us out, I suppose.

Q. Who do you mean by they had built, &c.?

Ans. McClellan, Ames and Company.

Q. How did you remove this wall?

Ans. We pulled it down and took it out.

Q. How many of your party were there engaged in removing the wall, or present to assist, if necessary?

Ans. I think there was only two of us.

Q. Who was with you?

Ans. I can't just call his name now.

Q. Who was on the other side of the wall from you, if any one, at the time you removed it?

Ans. We didn't find any person.

Q. What time of day or night did you remove the wall?

Ans. I think it was in the afternoon—in the daytime.

Q. You said in your direct examination that there were parties up there. Who did you refer to as being up there at the time the wall was removed?

Ans. I don't recollect of any person being there at the time the wall was removed.

Q. Can you say there was no one?
Ans. I don't say that there were none, because I don't recollect whether there was or not.
(Signed) WILLIAM F. KELSO.

Subscribed and sworn to before me this 15th day of February, A. D. 1884.
(Signed). JOHN W. WEBSTER,
Examiner.

Defendants also produce NATHAN S. HURD, a witness in their behalf, who, being by me first duly sworn to testify the truth, the whole
211 truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.
Ans. My name is Nathan S. Hurd; age, 45 years; occupation, miner, and reside in Denver, Arapahoe County, Colorado.
Q. During how many years did you mine on Leavenworth Mountain?
Ans. Four or five years personally, from 1870 to 1875.
Q. Do you know the Cayuga discovery shaft?
Ans. I do.
Q. Did you ever examine it?
Ans. I did.
Q. What did you find in that shaft?
Ans. I found nothing in the shaft except country rock.
Q. Was that shaft connected with any other workings?
Ans. It was not.

Cross-examined:

Q. When was this discovery examined by you?
Ans. I think in the summer of 1870.
Q. How deep was it then?
Ans. 14 or 16 feet.
Q. Was any one working on it at that time?
Ans. There was not.
Q. Why did you make the examination?
Ans. I was prospecting on Leavenworth Mountain at that time and wanted to see what there was in the hole that was sunk.
(Signed) NATHAN S. HURD.

Subscribed and sworn to before me this 15th day of February, A. D. 1884.
(Signed) JOHN W. WEBSTER,
Examiner.

212 By consent of counsel the further taking of testimony is continued until Saturday, the sixteenth day of February, A. D. 1884, at the hour of ten o'clock a. m., at my office in Denver.
(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Saturday, the sixteenth day of February, A. D. 1884, at *the* ten o'clock a. m., at my office, counsel for the respective parties being present, defendants produced WILLIAM A. ARNOLD, a witness in their behalf, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is William A. Arnold; age, 53 years; occupation, mining and land attorney, and reside in Denver, Colorado.

Q. For how many years, either in an official capacity as an officer of the U. S. land office or as attorney, have you been familiar with the details of land-office practice in the matter of mineral application for patent?

Ans. I went into the land office at Central as receiver May 1st, 1869, and was such officer until December 1st, 1873. The principal business of that office during my term was almost exclusively mineral business. From that time to this my time has principally devoted to mineral business, obtaining patent for mining claims.

Q. Do you recollect that while you were receiver in said land office in 1872 and 1873, applications for patent were made on the Cayuga Lode and on the Tunnel No. 5 Lode?

Ans. I do.

Q. Do you recollect this withdrawal of the application on the Cayuga Lode and that an amended survey was had on said No. 5 Lode?

Ans. I do.

213 Q. State fully the circumstances, as near as you can recollect of such withdrawal, and how the amended survey came to be made.

Ans. I think that the application for the Cayuga Lode and the application of the Marshall Silver Mining Company for the Tunnel No. 5 Lode were both filed the same day, and I see by Exhibit C that they were both filed on 14th December, 1872, and I think that the Marshall Company filed an adverse claim against the Cayuga Lode at that time. On or about April 30, 1873, Hugh Butler, as the attorney for Joseph Rist, who was one of the owners of record of the Cayuga Lode, and to the best of my recollection Mr. Rist appeared with him at the U. S. land office in Central City. I know that he appeared there at some time, it may not have been with Mr. Butler, but I know that he appeared there at some time and the statement was made that Mr. Rist did not sign himself, nor give anybody any authority to sign for him the papers in the application for patent for the Cayuga Lode, and positively refused to be a party to the application, and General Marshall appeared along about that time; whether he was there present at that day I can't state. The conversation took place between Mr. Lothrop and Mr. H. Butler, the attorney for Rist, in relation to the matters of the patent for the Cayuga Lode, but my recollection is that I was writing at my desk, and that the whole conversation took place between them and Mr. Lothrop. Mr. Marshall may have been there at that time when the conversation took place, but I do not recollect positively. After the whole question was debated between the parties Mr. Lothrop, the register, very properly decided that when a party owned an undivided interest and refused to be a party to the application and positively refused to have anything to do with it, that it rendered the application null and void, and Mr. Lothrop, the register, took the envelope that con-

tained the papers and put them into a pigeon-hole in one of his desks that contained withdrawn and rejected applications. He then made some note which I do not now recollect, in the margin of the book that
214 contained the filings, and against the Cayuga filing, "that it was discovered," or words to that effect; I don't recollect now what they were; the register then wrote a letter himself in his own handwriting, and I find a copy of it here in Exhibit A, dated U. S. Land Office, Central City, Colorado, April 30th, 1873, addressed to Erskine McClellan and others, notifying them of the appearance of Rist by his attorney, Hugh Butler; that he was not a party to the application in substance, and notifying him that there was no application pending in the office for the application of the Cayuga Lode, and giving them the usual time to appeal This letter was also signed by myself as receiver, which made it the joint opinion of the office.

Q. Do you know whether Erskine McClellan received that notice?

Ans. The letter was enclosed in an official envelope and never was returned to the land office as uncalled for, and I had personal knowledge, I don't know how I received it, that he got that letter.

Q. Was any appeal ever taken by the Cayuga parties or any of them from that decision?

Ans. There never was to my knowledge.

Q. Was the withdrawal by Rist of the Cayuga application in writing and filed with the papers in the office?

Ans. It was.

Q. Did you and the register officially notify the surveyor-general's office of the withdral of the Cayuga application, and do you find in the surveyor-general's office your original notification to that effect, a copy of which is Exhibit H in this case?

Ans. We did; and I hold in my hand the original letter written by Samuel P. Lothrop, the register, and signed by him as register and myself as receiver.

Q. After your notification to the surveyor-general's office, state whether an amended survey was procured from the surveyor-general's office
215 and filed in the land office on behalf of the No. 5 Lode, and what it showed with reference to the Cayuga survey, and what further occurred in your office down to the patenting of the No. 5 Lode?

Ans. After the usual time for an appeal had passed, given to the Cayuga parties, the Marshall Silver Mining Company dismissed their suit against the Cayuga Lode, as required by the usual rulings of the office, and an amended survey was made of Tunnel Lode No. 5, and at the proper time payment and entry was allowed to Tunnel Lode No. 5. An amended survey was filed in the land office, which showed no conflict with the Cayuga Lode.

(Complainants' counsel objects to so much of this answer as relates to the dismissal of the adverse suit and ruling of the land office requiring its dismissal, as incompetent, as being not the best evidence, that the same should appear by documents.)

Q. Was the Marshall Company required by the land office to dismiss its suit then pending against the Cayuga before entering No. 5, by special ruling entered in that case, or according to the usual requirement in like cases without any special ruling to that effect?

Ans. There were special instructions and decisions from the General Land Office to not allow any entry of a mining claim when a suit was pending to determine the question of possession or title. There was no special order made in this particular case.

Q. After the amended survey on the No. 5 was the Cayuga survey recognized in the land office, while you remained in office there, as a subsisting claim or as a cancelled claim?

(Complainants' counsel objects as immaterial.)

Ans. The office having rejected the application it was rejected as a whole.

Q. In the matter of the withdrawal or dismissal of the Cayuga claim, and the entry of the No. 5 claim on its amended survey, was there
216 any irregularity or departure from the usual course of business, so far as you know?

(Complainants' counsel objects as calling for the witness' conclusion.)

Ans. There was none that I know of.

Q. Was there any money or other consideration in these matters paid to yourself, or, so far as you know, to the register, over and above the lawful fees in such cases?

Ans. None whatever.

Q. Were all the proceedings you have spoken of public, and entered of record in the books of the land office the same as in other cases?

Ans. They were as public as any business transacted in the office.

Q. Were the memoranda, papers, and records in these cases open to inspection during business hours to Mr. McClellan or any other party, or his attorney, while you continued to hold the office of receiver?

(Complainants' counsel objects as immaterial.)

Ans. They were.

Q. State if you recollect any particular case occurring in your office prior to the withdrawal on the Cayuga which you can name as a precedent or similar ruling.

(Complainants' counsel objects as immaterial.)

Ans. I don't know what the date was, but F. J. Marshall, as president of the Marshall Silver Mining Company, filed an application for patent of the Compass and Square Lode; John Turck owned an undivided interest in the Compass and Square Lode, and he was not a party to the application, and the office refused to allow F. J. Marshall to proceed with that application for patent.

(Complainants' counsel objects to the answer as incompetent, as being matter which can only be shown by record.)

217 By consent of counsel the further taking of testimony in this cause is continued until Tuesday, the 26th day of February, A. D. 1884, at ten o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Tuesday the 26th day of February, A. D. 1884, at ten o'clock a. m., at my office in Denver, counsel for the respective parties being present, the further taking of testimony was continued by consent until Wednesday the 27th day of February A. D. 1884, at two o'clock p. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Wednesday, the 27th day of February, A. D. 1884, at two o'clock p. m., at my office in Denver, counsel for the respective parties being present, the further taking of testimony was continued by consent until Monday, the 3rd day of March, A. D. 1884, at ten o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Monday, the 3rd day of March, A. D. 1884, at ten o'clock a. m., at my office in Denver, by consent of counsel, the further taking of testimony was continued until Wednesday, the 12th day of March, A. D. 1884, at ten o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this Wednesday, the 12th day of March, A. D. 1884, at ten o'clock a. m., at my office in Denver, the counsel for the respective parties being present, William A. Arnold, the witness, in continuation of his testimony, deposed and testified as follow:

218 Q. Have you examined the purported entries of cancellation of the Cayuga application in the surveyor-general's office; if so, please state when you first saw them, and in whose handwriting, if you know, you found them to be?

(Complainant's counsel objects, because the question assumes that there was a purported cancellation entered in the surveyor-general's office which is not proved. The supposed entry, if any, should be produced, so that it may be seen what it is that the question and answer may refer to.)

(Question and objection waived and stricken out.)

Q. Please examine the books here presented, produced by and in the custody of the clerk of the surveyor-general's office, and describe the purported entries of cancellation of the Cayuga survey, and state in whose handwriting they are.

Ans. I find against the entry here in the book called a record of applications for survey, and I find in the margin under the head of remarks against the entry the words written here "cancelled May 12th, 1873, see letter No. 20" a portion of the margin of the paper after 20 appearing to be torn off, and I identify that subsisting as the handwriting of E. W. Cobb, who at that time was the mineral clerk of the surveyor-general's office. This is the original record application for mineral surveys in the office. I find this old record to be a copied into a new book here present, which seems to be a duplicate of the portion contained in the original record, and in the new book I find the No. of that letter to be No. 2029, which is the original of Exhibit H, and is the letter of the register and receiver to the surveyor-general of Colorado, stating the dismissal of the Cayuga application. I find in book of plats of surveys in the surveyor-general's office here present that the survey No. 231, mineral district No. 2, plat of the Erskine McClellan, Walter N. Webster, and Joseph Rist, claimant of the Cayuga, in the margin of this plat is written "cancelled

219 May 12th, 1873," and I identify that writing as writing of E. W. Cobb heretofore referred to.

No cross-examination.

(Signed) WILLIAM A. ARNOLD.

Subscribed and sworn to before me this 12th day of March, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

Defendants now produce EDWARD ROLLANDET, a witness of lawful age, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy in this cause, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Edward Rollandet; age, 32 years; chief draughtsman in the surveyor-general's office, and reside in Denver, Arapahoe County, Colorado.

Q. How long have you been employed in the surveyor-general's office?

Ans. Since June, 1878.

Q. Do you find on the official records and plats of the surveyor-general's office the application and plat of the Cayuga Lode? If so, please state how that application and plat have stood on the records of that office since May 12th, 1873.

(Complainants' counsel objects that no such application appears, that how plat and application have stood is irrelevant and immaterial, improper and incompetent, as calling for a mere conclusion of witness.)

Ans. I find an entry here on the old index book, referred to by the last witness, of an application and subsequent receipt and approval of the survey of the Cayuga Lode, and under the head of remarks is an entry in handwriting of E. W. Cobb, which is as follows: "Cancelled May 12th, 1873." Following that, in a different handwriting, is letter No.
220 20, which adjoins a portion that is torn off from the page, which may have destroyed a part of the No. There is also an entry made in pencil, which reads: "See papers on file May 12th, 1875." A part of this old index book, including the entry of the Cayuga Lode, has been copied into a new record book under my personal supervision. I know that the transfer was carefully made and subsequently compared with the original, and by comparing the one with the other, I find that the number of letter heretofore referred to is No. 2029, from which I infer that at the time the entry was transfer'ed that portion of the leaf, which is supposed to have contained the figures 29 was not yet torn off. Letter No. 2029 is a letter dated May 12th, 1873, signed by Samuel P. Lothrop, register, and William A. Arnold, receiver, directed to General W. H. Lessig, and General Lessig was then surveyor of Colorado, and is the original of Exhibit H here in evidence. The pencil entry is made in a handwriting which I am unable to identify. I find no letters filed May 12th, 1875, pertaining to the Cayuga Lode.

Q. Besides the index referred to, what other entries do you find in regard to cancellation of the Cayuga?

Ans. I find a marginal note on the original plat of the survey of the Cayuga Lode claim stating: "Cancelled May 12th, 1873."

Q. State whether upon the index just referred to you find, under the same heading "remarks," opposite the names of other lodes like entries of cancellation.

(Complainants' counsel objects, as irrelevant, immaterial, and improper.)

Ans. I do.

Q. State whether after the cancellation of the Cayuga Lode you find that an amended survey was allowed and approved on the No. 5 Lode.

(Complainants' counsel objects, as irrelevant, immaterial, and improper; calls for matter which must be shown by record.)

Ans. I can't answer this question without consulting other
221 records of the surveyor-general's office.

Q. Since the adjournment have you produced the records so as to enable you to answer the question; if yea, please do so?

(Complainants' counsel objects for same reasons last above assigned.)

Ans. I have the records here with me, and find that an amended survey of Tunnel Lode No. 5 has been approved, subsequent to the cancellation of the Cayuga The Cayuga was cancelled May 12th, 1873; amended survey to Tunnel Lode No. 5 was approved May 20th, 1873.

(Complainants' counsel objects to the answer as incompetent; it shows witness' conclusion as to what the record shows.)

Q. Since May 12th, 1873, until some time after the bringing of this suit, which was in the spring of 1873, how did the survey of the Cayuga stand on the corrected plat in the surveyor-general's office, and what did surveys approved during that period show relative to the Cayuga survey?

(Complainants' counsel objects as immaterial, irrelevant, improper, and incompetent; it calls for the witness' conclusion as to matters which if material can only be shown by records and documents.)

Ans. I cannot tell to a certainty, as I find that the present corrected sheet has been prepared about one year and a half ago, and I have not the old sheet to refer to. The old sheet is destroyed. I can add that according to the rules heretofore in force in the surveyor-general's office, a survey in the condition of the Cayuga claim would not have appeared on the corrected sheets, and all subsequent and conflicting surveys would have been approved in the same manner, as if no survey of the Cayuga existed.

Q. Upon the records of your office do you find many instances of amended surveys in the year 1873, and before and since?

(Complainants' counsel objects as irrelevant and immaterial.)

222 Ans. A great many.

Q. When a survey was approved in the year 1873 whose number, for instance, was 247, and such survey was amended, and in the meanwhile a prior survey, for instance No. 231, had been set aside, would the conflicting ground in such case be allowed to the later survey as amended?

(Complainants' counsel objects as immaterial, irrelevant, incompetent, and speculative, and calls for the witness' guess.)

Ans. It would.

Q. Was this actually done in the case of survey No. 231, Cayuga, and survey No. 247, Tunnel No. 5 Lode, in said office?

(Complainants' counsel objects for same reasons last above assigned. It calls for witness' conclusion as to matter which if material can only be shown by record or documents, and leading.)

Ans. Judging by the official plat of the amended survey of tunnel No. 5 Lode, it was.

(Complainants' counsel objects to the answer for same reasons assigned to the question.)

Q. How many mineral surveys since the Cayuga survey was cancelled, have been approved and patented over the original Cayuga ground, which have each taken the area covered by it, and once covered by the Cayuga survey?

(Complainants' counsel objects as immaterial, and all the above grounds assigned. It assumes a cancellation not proved.)

Ans. This I cannot say without referring to the approved or official plats and field-notes of all and every claim that has been approved since the date of cancellation.

Q. Since the last question have you made the examination you refer to; if so, please answer the previous question?

(Complainants' counsel objects for the same reasons last above assigned.)

223 Ans. I have, and find that as near as it can be determined there are six surveys, all of which have been approved subsequent to the 12th of May, 1873, which include the ground in conflict with the Cayuga Lode, some of them making no reference whatever to the Cayuga claim. The numbers are 399, Gates Lode, it takes the conflicting ground; No. 591, the Compass and Square Lode, also does not exclude conflicting ground; No. 1291, the Argentine Lode, does not show the claim nor does it exclude the ground in conflict; No. 1556, the Creole Lode, does not show the Cayuga claim, consequently it claims the ground in conflict; No. 1016, the Ocean Wave Lode, original survey, does not show the Cayuga claim, does not say whether or not it claims it. No. 1016 again, the Ocean Wave Lode amended survey, the ground in conflict is excluded with other surveys which cover the same ground as the Cayuga, hence I cannot say whether or not the Cayuga ground is claimed. No. 1473, the Standard Lode, does not show the Cayuga; does not make any exclusion. No. 1681, the Lycurgus Lode, excludes the ground in the same manner which is given heretofore, also amended; survey No. 247, Tunnel Lode No. 5, which makes no reference to the Cayuga Lode; also amended survey No. 248, Tunnel Lode No. 6, same as the preceding one, also survey 274, Tunnel Lode No. 7, which was approved prior to the date of the abandonment of the Cayuga, and which, according to the plat, excluded the ground in conflict.

(Complaintants' counsel objects to all of this answer which follows the word "lode" when it first occurs in the answer, for the reasons above stated and as inexpressive.)

Q. State when the Cayuga survey was reinstated on the corrected plats of your office, if it has been reinstated?

(Complainant's counsel objects because incompetent and immaterial; calls for matter which can only be shown by the records or by documents.)

Ans. The Cayuga claim now appears on the corrected sheet and
224 I have good reason to believe that it was placed thereon about one year and a half ago.

(Complainants' counsel objects to the answer as irresponsive so far as the last part thereof is concerned, as being the reasoning of the witness and not a statement of any fact within his knowledge.)

Q. When and how, if you know, was the surveyor-general's office notified to put the Cayuga back on the corrected sheet?

Ans. I don't know.

Q. The Ocean Wave amended survey and Lycurgus No. 1681, were they approved since the Cayuga was put on the corrected sheet?

(Complainants' counsel objects as immaterial. Witness has stated that he don't know when the Cayuga was put back on the corrected sheet consequently can't know the fact, and the fact can only be shown by the records or documents.)

Ans. January 26th, 1884, is the date of approved amended survey on the Ocean Wave. The date of approval of the Lycurgus 1681 is June 20th, 1882; therefore the first named survey was approved at least a year since the Cayuga was platted on the corrected sheet. The other one I cannot tell.

Q. Between 1872 and until about two years ago were surveys of mineral applications cancelled from time to time by action of the surveyor-general's office of Colorado according to the usual practice of the office, without special orders in each case from the Department at Washington?

(Complainants' counsel objects as immaterial and irrelevant and incompetent, and calls for matter which can only be shown by the records and files of the office.)

Ans. To my recollection they were, and I am satisfied that I could point out certain cases by referring to the records of the office.

225 (Claimants' counsel objects to so much as follows the words "I am satisfied," including those words as not responsive and not evidence.)

Q. After the final approval of survey in your office where are the papers in any cases forwarded?

Ans. Of the three copies which are made in each case of the plat one goes to the local land office, the two others either to the deputy mineral surveyor who made the survey, or to the applicants, if so directed, together with the transcript of the field-notes.

Q. When there has been an amended survey has it been usual to send to the land office both the original survey and field notes, or only the original, or only the amended plat and field notes?

(Complainant's counsel objects as wholly irrelevant.)

Ans. In case of an amended survey we only forward copies of the plat of the amended survey, the originals in such case being no more considered.

Q. Did you see or examine the plat of the No. 5 application, which was brought from the files at Washington by Mr. Tyssowski (as he said)?

Ans. It was shown to me.

Q. Did you notice in that map that the surveyor-general's certificate was pasted over the paper in the lower right-hand corner?

Ans. I did.

Q. State whether such pasting at and about the date of that certificate was a matter of frequent occurrence, and state why, if you know, it was done?

(Complainant's consul objects as irrelevant, immaterial, it calls for what occurred at a time long prior to witness's connection with the office, and which he can't know of his own knowledge either in respect to the fact or

the reason for it. The record referred to is not a record of this office, but a record of the land office at Washington.)

Ans. Quite frequently, as the plat books in the office show, I can't
226 give any definite reason why, but suppose that some change in the form of certificate caused it.

(Complainant's counsel objects because not responsive, and so much of it as is a supposition as not being evidence of any sort.)

Q. Are all the books, plats, and papers, of the surveyor-general's office which you have referred to in your testimony a part of the public record of that office, and have they been during your connection with that office accessible to interested parties and their attorneys, upon request during office hours?

(Complainant's counsel objects as immaterial.)

Ans. They are and they have since I have been connected with the office since 1878.

Q. Please explain what you mean by the words "corrected sheet," or "corrected plat," in this examination, and what it contains?

Ans. A corrected sheet is a map showing all the approved mineral surveys in connection with each other, to the extent of about a mile square.

Q. When a new survey is made is it put on that plat, and what is done when a survey is cancelled?

(Complainant's counsel objects as immaterial.)

Ans. One of the first proceedings in the examination of a mineral survey is to place it on the corrected sheet; whenever survey is cancelled it is erased from the sheet or marked as being cancelled.

Q. Between May 12th, 1873, and November 30th, 1881, how did the Cayuga survey stand on the corrected plat and other records of the office with relation to its being a subsisting or a cancelled survey?

(Complainant's counsel objects, as irrelevant, incompetent, calls for matter that can only be shown by the corrected plat and records.)

Ans. As far as I know it stood as any other cancelled survey. I
227 judge by the fact that so many surveys have been allowed to pass without showing intersection with the Cayuga claim which is contrary to the rules of the office, if such survey was considered a part of the records of the office.

Cross-examination:

Q. In whose handwriting on the old index are the words "Letter No. 20?"

Ans. I don't know.

Q. In whose handwriting is the pencil memoranda mentioned by you, "See papers on file May 12, 1875?"

Ans. That I do not know either.

Q. If such memoranda had been made by any authorized person in the office, would you from your knowledge obtained by reference to records of mineral entries in that office have been able to identify the handwriting of the memoranda referred to?

Ans. It would depend upon circumstances.

Q. Is this your only answer?

Ans. Yes.

Q. Do other persons than those authorized employés in this office have access to records and files pertaining to matters of this court?

Ans. They have, with the assistance of some employés of the office.

Q. Is the pencil memoranda, "See papers on file March 12, 1875," copied on to the new book referred to by you?

Ans. Yes.

Q. When was that copied?

Ans. I can't exactly tell the time when it was done, but it was done under my supervision.

Q. Are the words and figures, "Cancelled May 12th, 1875," crossed out in any manner? And, if so, describe how.

Ans. No, sir; they are not crossed out.

Q. Is there a pencil mark drawn these words and figures
228 in either the old or new book?

Ans. No, sir.

Q. Are any of the memoranda referred to by you as your direct examination as having some reference to cancellation crossed by a pencil mark?

Ans. Yes, sir.

Q. Which is it?

Ans. The memoranda on the plat of the Cayuga Lode.

Q. Do these memoranda on the books and plat concerning cancellation have any other basis or authority for being made, so far as the records show, other than Exhibit H referred to by you on your direct examination?

Ans. I suppose not.

Q. In whose handwriting are the words and figures on the margin of the original plat of the survey of Cayuga, "Cancelled May 12, 1873?"

Ans. I don't know.

Q. In your direct examination you have referred to the survey of the Cayuga as cancelled; do you mean to be understood as testifying that it has been cancelled in any other way than by the letter Exhibit H and the marginal memorandum referred to by you on your direct examination?

Ans. No.

Q. How many surveys, including all the ground in conflict between the original Cayuga survey and the original Tunnel No. 5 survey, have been approved in the surveyor-general's office?

Ans. I couldn't tell.

Q. Has there been any; and, if so, how many that you know of?

Ans. That I can't tell without looking it up.

Q. Then what are we to understand by this language used on your direct examination: "I have, and find that as near as it can be determined there are 6 surveys, all of which have been approved subsequent to the
12th of May, 1873, which include the ground in controversy
229 with the Cayuga Lode, some of them making no reference to the Cayuga claim?"

Ans. That was in answer *in* to a different question.

Q. Do you mean to be understood by your language quoted in the last question, that there have been 6 surveys approved in your office, and each including the ground in controversy? If not, please state what you mean to have us understand by the language so quoted.

Ans. If by the words "ground in controversy" is understood the whole of the Cayuga Lode, I did; otherwise, not.

Q. Is it a part of your duty to examine plats as they come to the office from the deputy mineral surveyors to see whether they conflict with any previous approved survey?

Ans. It has been for several years.

Q. Have any of these 6 approved surveys mentioned by you which include the Cayuga ground been approved after examination by you?

230 Ans. Very likely.

Q. Please explain how it comes about that more than one survey is approved upon the same ground in whole or in part.

Ans. Because under certain circumstances the office is instructed to do so.

Q. Was the office instructed to approve surveys numbers 399, 591, 1291, 1556, 1016, 1473, 1681, 247 and 248, surveys each including some of the ground included in the others?

(Defendants' counsel object because it is unintelligible and premised on what witness has not said. He only stated that each included a part of the original Cayuga survey.)

Ans. I don't understand the last part of the question, so I can't answer it.

Q. Has your office approved since May 12th, 1873, more than one survey including the same ground, part of the Cayuga survey as approved?

Ans. The office has approved more than one survey including part of the Cayuga Lode.

Q. Has the same part of the Cayuga Lode been included in more than one survey since May 12th, 1873, approved by your office?

Ans. I would have to refer to the records in order to answer that question.

By consent of counsel the further taking of testimony in this cause is continued until Thursday, the 13th day of March, A. D., 1884, at ten o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance this Thursday, the 13th day of March, A. D., 1884, at ten o'clock a. m., at my office the counsel for the respective parties being present, EDWARD ROLLANDET, in continuation of his testimony begun on yesterday, deposed and testified as follows:

231 In answer to last question, further says; I have examined the records of the office, and as far as can be determined therefrom I find that such is not the case.

Q. What is not the case?

Ans. That no survey has been approved since May 12th 1873, claiming any part of the Cayuga survey which might have been included in a previous one.

Re-examination:

Q. Is it not a fact that the plat in the patent of the Cayuga Lode here shown witness, exhibit B, purports to show clear in the Cayuga portions of ground which lead, between May 12, 1873, the date of the entry of the cancellation of the Cayuga, on November 30, 1881, the date of the entry of the Cayuga, been approved in your office in favor of sundry

other applications, to wit, the No. 5, the No. 6, the Gates, the Standard, and other lodes?

(Complainants' counsel objects, as improper; it calls for witness' construction of the patent.)

Ans. It does.

(Signed) EDWARD ROLLANDET.

Subscribed and sworn to before me this 13th day of March, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

Defendants' counsel now offers certified copy of the Senaca Lode, Nonenjoy Lode, Camadice and Cayuga Lode, each recorded September 28th, 1867, by Walter N. Webster et al., upon the same discovery shaft. To he introduction of which the complainants' counsel objects, as irrelevant and immaterial, except as to the Cayuga Lode, which is hereto attached and marked Exhibit No. 2. Defendants' counsel now offers in
232 evidence Exhibit No. 3, the separate dismissal on his part by Joseph Rist in case No. 644, district court of Clear Creek County, in the injunction case brought by the claimants of Cayuga Lode against the own' and other parties working the No. 5 Lode, dated November 21, 1871.

(Complainants' counsel objects, as immaterial, irrelevant, incompetent, improper. The paper presented is not evidence of anything; there is no evidence that such a suit as mentioned in the question was ever pending anywhere or in any court.)

Defendants' counsel now offers in evidence Exhibit No. 4, a certified copy of order dated August 27th 1872, dismissing the same suit.

(Complainants' counsel objects to the introduction of Exhibit 4, for same reasons last-above assigned.)

Defendants now produce HUGH BUTLER, a witness of lawful age, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Hugh Butler; age, 44 years; occupation, attorney at law; and reside in Denver, Arapahoe County, Colorado.

Q. Did you know Joseph List in his life-time?

Ans. I did.

Q. Who was his attorney during the years 1871, 1872, and 1873?

Ans. I think I attended to most of his business at that time; he may have had other attorneys.

Q. Do you recollect cross injunction suits pending in the district court of Clear Creek County between the claimants of the Cayuga Lode on one side and the Compass and Square and No. 5 on the other side, for about a year or so prior to the entry of the No. 5 patent, and what action Joseph Rist as one of the Cayuga claimants took in those cases?

(Complainants' counsel objects, as immaterial, improper, incom-
233 petent, and as calling for matter which can only be shown by records and files.)

Ans. I don't know that I especially remember any particular equity suits in the controversy referred to. But I do remember that there was a controversy between the owners of the Cayuga Lode and Tunnel Lode No. 5, and perhaps other lodes claimed by the Marshall Silver Mining Company, and my general recollection is that in that controversy, as in most other controversies of that kind, there were equity suits growing out of them. I remember that Mr. Rist, whose name was used in connection with the controversy concerning the Cayuga Lode, consulted with me concerning it, and expressed his dissatisfaction with the use of his name in that connection, and wanted to withdraw from any participation in it. We had two or more such conversations, one or more occurred in my office at Central City, and one occurred at Georgetown; as a result of those conversations a paper of some kind was prepared, either by myself or some one else about that time, the general purport of which was to disassociate Mr. Rist from any controversy between the Cayuga Lode and the other lode or lodes then claimed by the Marshall Silver Mining Company.

(Complainants' counsel objects for reasons last-above assigned, and further to the hearsay in the answer contained.)

Q. The paper signed by Rist withdrawing application on the Cayuga is dated March 29th, 1873; can you state, either from your recollection or from the exhibits in this case, for how long prior to that time Joseph Rist had refused to take any part in the contest with the No. 5 Lode?

(Complainants' counsel objects, as immaterial, irrelevant, and improper, also because it calls for witness' conclusion.)

Ans. The Exhibit No. 3, to which my attention is called, does not at present refresh my recollection. I may or may not have seen the original of which this is a certified copy, but I have a general recollection that for some time before, several months, perhaps a year or so, Mr. Rist was dissatisfied with his associates in the Cayuga Lode and opposed to any
234 litigation concerning it and the Tunnel No. 5, if that be the lode, and I believe it was, about which the controversy was then pending. Some time in the spring of 1873 I think the matter culminated, and the papers before mentioned were signed about that time.

(Complainants' counsel objects to the answer for the same reasons as to question, and for the further reason that is hearsay and the conclusion of the witness.)

Q. Was this action of Mr. Rist's, so far as your knowledge goes, induced by any payment or proposition proceeding from the No. 5, claimants, or was it induced by his dissatisfaction with his own side of the case?

(Complainants' counsel objects, as immaterial, incompetent, and calls for the conclusion of the witness.)

Ans. It was not induced, so far as I know, by any payment or promise of payment to Mr. Rist. It was due, as I then thought, to his general dissatisfaction and to his fear that he might be liable for costs and expenses, not only to the extent of his own interests, but also all of the costs and proceedings.

Cross-examination:

Q. Were you a member of the law firm of Butler and Morrison at any time; if so, from what time to what time; who was the other member of that firm, and where was the principal office kept?

Ans. Mr. R. S. Morrison and myself were associated in the practice of

law for one year; I think Mr. Morrison before that time and then resided at Georgetown; I resided at Central City. The copartnership, if I remember rightly, referred to Clear Creek County and other business except that of Gilpin County, and this arrangement lasted during the year 1873, according to my present recollection.

(Signed) HUGH BUTLER.

Subscribed and sworn to before me this 13th day of March, A. D. 1884.

235 (Signed) JOHN W. WEBSTER,
Examiner.

Defendants now produce BENJAMIN H. SMITH, a witness of lawful age, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy in this cause, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

Ans. My name is Benjamin H. Smith; age, 41 years; occupation, examiner in the surveyor-general's office, and reside in Denver, Arapahoe County, Colorado.

Q. How long have you been employed in the surveyor-general's office?

Ans. Since July, 1880; I have been employed previously in the office in 1869, and from October, 1872, to July, 1874.

Q. From the time you went there, in 1880, until February, 1882, did the Cayuga survey, No. 231, appear on the corrected plat in your office?

(Complainants' counsel objects, as immaterial.)

Ans. I don't know.

Q. Do you know when it was put on the corrected plat?

Ans. It was put on when the present sheet was made. I can only state approximately when that was. In the winter of 1882.

Q. Upon what information or authority was that survey then placed upon the corrected plat?

Ans. It was placed there on receipt of a letter which I brought with me. This is a letter from Commissioner of the General Land Office, dated February the 8th, 1882.

(Here counsel for complainant objects to his stating the contents; the letter itself is the best evidence.)

Q. Please show that letter to the counsel for the United States, will you?

Ans. I will.

(Here letter shown.)

236 Q. Is that letter, as you call it, any more than the regular monthly list of patents issued during the previous month, which your office regularly receives from Washington?

Ans. It is nothing more than a list of patents issued during the month of January, 1882.

Q. Does it contain any reference to the Cayuga, other than to give its name and number in that list?

(Complainants' counsel objects, because it is not the best evidence.)

Ans. It gives besides the name and number.

(Counsel for complainant objects to witness stating what it gives as not the best evidence.)

The name of claimant and number of patent.

(Complainants' counsel objects to all the evidence of this witness, and moves to have the same struck out unless a certified copy of the letter is put in evidence.)

The defendants' counsel now offers in evidence a certified copy of the letter, which is hereto attached and marked Exhibit No. 5. And also offers in evidence Exhibit No. 6, a certified copy of the Cayuga survey.

(Signed) BENJ. H. SMITH.

Subscribed and sworn to before me this 13th day of March, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

Defendants also produce ROBERT O. OLD, a witness of lawful age, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. State your name, age, occupation, and place of residence.

237 Ans. My name is Robert O. Old; age, 55 years; occupation, miner and mining expert, and reside at Georgetown, Clear Creek County, Colorado.

Q. Do you know the Cayuga discovery shaft on Leavenworth Mountain?

Ans. I do.

Q. For how many years have you been engaged in mining or examining mines in Clear Creek County, and what present position do you now hold in the mining industry?

Ans. I have been intimate with the mines and mining interests of Clear Creek County for 15 years, and have been to a more or less extent engaged in active mining in that county for 13 years. I am a miner, employing men working my mines, including giving leases on the same. In fact, I am actively engaged in mining.

Q. Did you ever examine that Cayuga shaft, and, if so, when?

Ans. I examined it about 12 years ago.

Q. Was there a lode in that shaft?

Ans. There was not.

Cross-examination:

Q. What was the occasion of your examining that shaft 12 years ago? How deep was it when you examined it, and what did you do in the matter of such examination?

Ans. The occasion was, as I understood, a conflict of supposed interests between the owner or owners, I don't know which, of the Compass and Square and the owner or owners of the Cayuga Lode. My recollection of the depth of what was called the Cayuga discovery shaft was about 20 feet. [I then gave testimony in the court held at that time at Georgetown, before Judge Belford, to being in.*] Going down into the Cayuga shaft, I examined the same to see if there was any lode or anything that could be supposed to give the evidence of a lode, and I found nothing that, in my judgment, gave any evidence of a lode.

*Stricken out before signing. (S'g'd) JOHN W. WEBSTER, *Examiner.*

Q. How do you fix the time of such examination as being 12 years ago?

Ans. Because I remember that I was on the point of visiting
238 England with my family at the time, and I think that I was delayed a few days in leaving in consequence, and that was in January, 1872, to the best of my memory. It was in the winter, anyhow.

(Signed) ROBERT O. OLD.

Subscribed and sworn to before me this 13th day of March, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

It is hereby stipulated by counsel that defendants' testimony is closed until the day to which complainant shall give notice of taking rebuttal testimony, on which day any further testimony of defendants is to be on hand and closed before rebuttal begins.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the notice based upon an order fixing the time for taking testimony in rebuttal, issued by me as examiner, on the 9th day of April, A. D. 1884, at ten o'clock a. m., A. W. Brazee, esq., U. S. district attorney, who appears for complainant, produces a telegram from Mr. Morrison asking a continuance until to-morrow, Thursday, the 10th day of April, A. D. 1884, at 9 o'clock a. m. The counsel for complainant consenting, it was continued until Thursday, the 10th day of April, A. D. 1884, at 9 o'clock a. m., at my office in Denver.

(Signed) JOHN W. WEBSTER,
Examiner.

Pursuant to the foregoing continuance, this, Thursday, the 10th day of April, A. D. 1884, at 9 o'clock a. m., at my office in Denver, counsel for the respective parties being present, the defendants produced SOLOMON ROBESON, a witness in their behalf, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

239 Q. State your name, age, occupation, and place of residence.

Ans. My name is Solomon Robeson; age, 53 years; occupation, miner, and reside at Georgetown, Colorado.

Q. How many years have you mined in Clear Creek?

Ans. For sixteen years.

Q. During which years did you mine on Leavenworth?

Ans. During 1870, 1871, 1872 and 1873, continuously; since that time I have worked there most of the time up to within the last 5 years.

Q. Do you know the Cayuga discovery shaft?

Ans. I do.

Q. Is there any lode in that shaft?

Ans. I never have seen any.

Q. You recollect the time when the Cayuga parties were in litigation with Square and Compass Lode in 1871 or '72?

Ans. Yes, sir.

Q. Has any work been done on the so-called Cayuga Lode on behalf of

the Cayuga claimants by the Cayuga parties, to your knowledge, since that time?

Ans. No.

No cross-examination.

(Signed) SOLOMON ROBESON.

Subscribed and sworn to before me this 10th day of April, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

(Defendants' counsel no' offers paper marked No. 6, being a certified copy of the list of patents issued in January, 1882.

To which complainant's counsel objects, as irrelevant and immaterial.

240 Defendants' counsel now offers in evidence Exhibit No. 7 by a certified copy of the original plat, with notice of cancellation of the Cayuga.

To which complainants' counsel objects, so far as the note of alleged cancellation.

Defendants' counsel also offers a certified copy of location certificate of the Compass and Square Lode, which is marked Exhibit No. 8, and attached to this testimony.

To which complainants' counsel objects as irrelevant and immaterial.)

Defendants' counsel now produces ERNEST LE NEVE FOSTER, recalled, who, being by me duly sworn, deposes and says:

Q. What is that map [Exhibit No. 1 shown witness?]

Ans. It is a map made by me to show the relative positions of the Cayuga Lode survey No. 231, and the Tunnel Lode No. 5, Tunnel Lode No. 247, as they appear upon the ground and other conflicts.

Q. Is it correct?

Ans. It is.

Q. Is it based upon the same survey that you refer to in your previous examination?

Ans. It is.

Q. What does the blue ground represent?

Ans. The Tunnel Lode No. 5, less the conflict.

Q. What does the purple ground represent?

Ans. The conflict between the Cayuga Lode and the Tunnel Lode No. 5.

Q. What does the buff ground show?

Ans. That portion of the Cayuga Lode which is covered by patents subsequent to the survey of the Cayuga Lode, and I believe prior to the issuance of the patent to the Cayuga.

Q. What does the pink ground represent?

Ans. That portion of the Cayuga Lode patent which has not
241 been covered by any others.

Q. What does the plat in the southeast corner of the exhibit show?

Ans. It shows the 4 lodes apparently located from the same shaft and

*Sup 223

spoken of in my previous testimony, viz: The Senaca, Cayuga, Camadice, and the Honenjoy, as described in the location certificates, and also the Cayuga Lode as patented.

Q. Does the Cayuga Lode as patented agree with any one of the 4 lodes located on the Cayuga discovery?

(Complainants' counsel objects, as immaterial, irrelevant, and incompetent. It calls for the witness' conclusions.)

Ans. It does not.

Q. How does the Cayuga as patented when platted lie to the Cayuga as located when platted?

(Complainants' counsel objects same as above.)

Ans. Nearly at right angles.

Q. Please state where the Cayuga discovery shaft, if continued perpendicularly downward, would come with reference to the developments of the Colorado Central Company.

(Complainants' counsel objects, as irrelevant, immaterial, and speculative.)

Ans. It would come about 75 feet northeasterly of the Marshall Tunnel. I can't tell whether it would strike any of their works positively or not.

Cross-examination:

Q. Is this map or plat No. 1 made showing the relative positions of the Cayuga Lode, survey 231, and Tunnel Lode No. 5, survey 247, correcting or eliminating the error which you mentioned on your previous direct examinations in the former depositions in this case?

Ans. Yes, sir; it is.

Q. Can you now tell the exact area of the purple portion on this
242 plat?

Ans. I can't tell you any more exactly than I did before.

Q. State the area, as nearly as you can, covered by the purple ground.

Ans. It would be about the tenth of an acre.

(Signed) ERNEST LE NEVE FOSTER.

Subscribed and sworn to before me this 10th day of April, A. D. 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

Defendants' counsel now offers in evidence a map referred to by the last witness, and which is marked Exhibit I and is hereto attached as a part of the testimony.

To which the complainants' counsel objects, as irrelevant, immaterial, and improper, because taken in connection with the testimony of Mr. Foster on his being recalled the last time; it appears to be made from data assumed and not proved by any competent evidence.

Defendants' counsel now offers in evidence a certified copy of the location certificate of the Compass and Square Lode, Exhibit 8.

To which complainants' counsel objects as asserted and immaterial.)

The defendants now close the taking of their testimony, this April 10th, 1884.

(Signed) JOHN W. WEBSTER,
Examiner.

EXAMINER'S FEES.

Taking testimony, 284 folios. @ .20		$56 80
11 days' attendance, @ $3.00		33 00
Administering 15 oaths, @ .10		1 50
243 Marking and filing 8 exhibits, @ .10		80
Total due		$92 10

Received payment of F. J. Marshall, for defts.

(Signed) JOHN W. WEBSTER,
Examiner.

APRIL 26TH, 1884.

DEFENDANTS' WITNESSES CLAIMED FEES AS FOLLOWS:

George Turnbull, 2 days, @ 1.50	3 00
Frank F. Bruné, 3 days, @ 1.50	4 50
172 miles, @ 5	8 60
George W. Hall, 5 days, @ 1.50	7 50
100 miles, @ 5	5 00
February 13, 14, and 15, 1884. Ernest Le Neve Foster, 4 days, @ 1.50	6 00
100 miles, @ 5	5 00
Byron E. Cox, 2 days, @ 1.50	3 00
100 miles, @ 5	5 00
Albert E. Chase, 5 days, @ 1.50	7 50
100 miles, @ 5	5 00
Francis J. Marshall, 5 days, @ 1.50	7 50
James W. O'Bryan, 2 days, @ 1.50	3 00
100 miles, @ 5	5 00
William F. Kelso, 2 days, @ 1.50	3 00
Nathan S. Hurd, 2 days, @ 1.50	3 00
William N. Arnold, 2 days, @ 1.50	3 00
Edward Rollandet, 1 day, @ 1.50	1 50
Hugh Butler, 1 day, @ 1.50	1 50
Benjamin H. Smith, 1 day, @ 1.50	1 50
Robert O. Old, 1 day, @ 1.50	1 50
100 miles, @ 5	5 00
244 Solomon Robeson, 1 day, @ 1.50	1 50
104 miles, @ 5	5 20
April 10, 1884. Ernest Le Neve Foster, 1 day, @ 1.50	1 50
100 miles, @ 5	5 00

(Signed) JOHN W. WEBSTER,
Examiner.

UNITED STATES OF AMERICA,
District of Colorado, ss:

To the honorable the judges of the circuit court of the United States for the district of Colorado, in chancery, presiding.

I, John W. Webster, one of the examiners in chancery of the circuit court of the United States for the district of Colorado, in accordance with

the 67th rule of the supreme court, and amendments, and also by virtue of an order by me made as examiner, fixing the time and place for the taking of testimony in this cause, and notice thereof served upon the opposing counsel hereto annexed, do most respectfully certify and report unto your honors that Walter N. Webster, Erskine McClellan, John Turck, George W. Hunter, Charles A. Martine, Frank De La Mar, Frank A. Maxwell, Edward Rollandet, Edward J. Brooks, Joseph Tyssowski, Francis J. Marshall, Ernest Le Neve Foster, George W. Hall, William H. Lessig, and Othenil R. Cannon, witnesses on behalf of the complainant, and that George Turnbull, Francis F. Bruné, George W. Hall, Ernest Le Neve Foster, Byron E. Cox, Albert E. Chase, Francis J. Marshall, James W. O'Bryan, William F. Kelso, Nathan S. Hurd, William A. Arnold, Edward Rollandet, Hugh Butler, Benjamin H. Smith, Robert O. Old, and Samuel Robeson, witnesses on behalf of defendants, were examined before me, who, previous to their respective examinations in this cause, were by me duly cautioned and sworn upon their respective oaths to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the parties in this cause.

245 That the testimony of the said witnesses was taken and reduced to writing by me, and after the same had been taken and reduced to writing, the testimony of said witnesses was read over to them by me in their presence and in the presence of the counsel and such of the parties as were in attendance before me, and thereupon the same was subscribed and sworn to by said witnesses respectively, the oaths being administered by me at my office in Denver, on the dates set forth in the jurats appended to the foot of the testimony as noted in said testimony. And I do further certify and report that the complaint, by counsel and introduced in evidence maps, plats, and documents, as exhibits A, B, C, D, E, F, G, H, I, J, K, L, *M*, O, and P, 16 exhibits in all, and that defendants introduced in evidence maps, plats, and documents, as exhibits 1, 2, 3, 4, 5, 6, 7, and 8, all of which said exhibits are properly marked and returned with this testimony, and are referred to their respective folios in the indices attached to this testimony.

And I further certify and report that the testimony and exhibits in this case are bulky and large, and for convenience I have placed the testimony of complainant, direct and rebuttal, in one package, the testimony of defendant in one package, and all the exhibits in one package, properly marked and refered to in the testimony herewith returned.

And I further certify that I have duly folioed said testimony in red ink figures upon the left-hand margin thereof, and that the taking of testimony was continued from time to time by consent of counsel as therein noted.

And I further certify that I am not an attorney, solicitor, or of counsel for either of the parties, or otherwise interested in the event of this suit. All of which is respectfully submitted.

(Signed) JOHN W. WEBSTER,
Examiner.

Witnesses.

George Turnbull,	direct testimony.	from folio	267	to	273
" "	cross "	"	273	"	284
Francis F. Bruné,	direct "	"	287	"	303
" "	cross "	"	303	"	311
George W. Hall,	direct "	"	311	"	329
" "	cross "	"	329	"	323
" "	redirect "	"	323	"	324
Ernest Le Neve Foster,	direct "	"	325	"	354
" " "	cross "	"	354	"	360
Byron E. Cox,	direct "	"	360	"	364
" "	cross "	"	364	"	368
Albert E. Chase	direct "	"	369	"	381
Francis J. Marshall,	direct "	"	381	"	404
" "	cross "	"	404	"	406
" "	redirect "	"	406	"	409
James W. O'Bryan,	direct "	"	409	"	412
" "	cross "	"	412	"	414
" "	redirect "	"	414	"	414
" "	recross "	"	414	"	415
William F. Kelso,	direct "	"	415	"	422
" "	cross "	"	422	"	427
Nathan S. Hurd,	direct "	"	427	"	429
" "	cross "	"	429	"	431
William A. Arnold,	direct "	"	431	"	459
Edward Rollandet,	direct "	"	459	"	491
" "	cross "	"	491	"	502
" "	redirect "	"	502	"	504
Hugh Butler,	direct "	"	507	"	518
247 Hugh Butler,	cross-testimony	from folio	518	to	520
Benjamin H. Smith,	direct "	"	520	"	526
Robert O Old,	direct "	"	527	"	530
" "	cross "	"	530	"	533
Solomon Robeson,	direct "	"	536	"	539
Earnest Le Neve Foster,	recalled, direct	"	541	"	546
" " "	cross	"	546	"	548

Exhibits.

Exhibt 1, introduced, &c	at folio	548
" 2, " "	"	505
" 3, " "	"	505
" 4, " "	"	506
" 5, " "	"	526
" 6, " "	"	539
" 7, " "	"	540
" 8, " "	"	540

(Signed) JOHN W. WEBSTER,
Examiner.

(Endorsed:) No. 1145. The United States vs. The Marshall Silver

Mining Company and The Colorado Central Consolidated Mining Company. Defendants' testimony. Filed Apr. 26, 1884. (Signed) Edward F. Bishop, clerk.

248 And the exhibits referred to in and filed with the examiner's report of testimony, are in words and figures as follows, to wit:

Exhibits to examiner's report.

EXHIBIT A.—*John W. Webster, examiner.*

DEPARTMENT OF THE INTERIOR, H. F. C.,
GENERAL LAND OFFICE,
Washington, D. C., February 3, 1883.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of all the papers in the matter of Central City, Colorado, mineral entry No. 1778, for the claim of Erskine McClalland et al., upon the "Cayuga" Lode, is a true and literal exemplification from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

249 { SEAL U. S. GEN. LAND OFFICE. } (S'g'd) N. C. McFARLAND,
Commissioner of General Land Office.

Application for patent. Cayuga.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

Erskine McClelland and Walter N. Webster, of the above-named county and Territory aforesaid, being first duly sworn according to law, each for himself and not one for the other, on oath deposes and says that they are citizens of the United States and over the age of twenty-one years; that they are applicants for patent to their claim of 2,300 ft. in length by 50 ft. in width of the Cayuga Lode, on Leavenworth Mt., Griffith mining district, Clear Creek County, Colorado Territory. Affiants further depose and say that they have the possessory right to the premises embraced within the said application for patent, as set forth in the plat of the survey of said premises made by direction of the surveyor-general of the Territory of Colorado, by virtue of a purchase for valuable consideration from the grantees of James W. Ames et al., who were the original discoverers and locators of said premises, and by virtue of compliance by said Erskine McClellan and Walter N. Webster and their grantors, with the rules, regulations, and customs of Griffith
250 mining district, the laws of the Territory of Colorado, and the several acts of Congress pertaining to mineral lands, and that the developments and improvements on the aforesaid claim amount in value to a sum exceeding five hundred dollars.

ERSKINE McCLELLAN.
WALTER N. WEBSTER.

Subscribed and sworn to before me this 12th day of December, A. D. 1872.

[SEAL.] HENRY C. HARRINGTON,
Notary Public.

Proof of posting plat and notice.

Joseph B. Johnson and William H. Lane, each for himself and not one for the other, being first duly sworn according to law, deposes and says that he is a citizen of the United States over the age of twenty-one years, and was present on the twelfth day of December, 1872, when a plat representing Erskine McClellan, Walter N. Webster, and Joseph Rist, claim upon the Cayuga Lode, situate in Griffith mining district, Clear Creek County, and Territory of Colorado, together with notice of said Erskine McClellan, Walter N. Webster, and Joseph Rist's intention to apply for a survey and patent therefor, was posted in
251 a conspicuous place on said mining claim, to wit, upon a board placed near the discovery shaft, where it could be easily seen and examined, and a true, full, and correct copy of said plat and notice is hereto attached and made a part of this affidavit.

JOSEPH B. JOHNSON.
WILLIAM H. LANE.

Subscribed and sworn to before me this 12th day of December, A. D. 1872, and I hereby certify that I consider the above deponents credible and reliable witnesses, and that the foregoing affidavit, to which a full, true, and correct copy of the plat and notice referred to, were attached at the time, was read and examined by each of them before their signatures were affixed thereto, and the oath made by them.

[SEAL.] HENRY C. HARRINGTON,
Notary Public.

Notice is hereby given that we, Erskine McClellan, Walter N. Webstr, and Joseph Rist, do claim by purchase twenty-eight hundred (2,800) feet in length by fifty (50) feet in width, of surface ground on the Cayuga Lode, being a silver bearing vein of rock in place, and situated in the mining district county and territory aforesaid, the location and extent thereof being more fully described as follows, to wit: Beginning at the SW. cor.
252 Sec. 19, T. 4 S., R. 74 W., var. 15° 30′ E.; thence N. 80° E. 4,240 ft., established post No 1, being a post in mound of stones marked No. 1 & 231, from which peak of Independent Mt. bears S. 64° E., peak S. of Clear Lake, S. 21° 30′ E.; thence N. 67° E. 950 ft., to post No. 2; thence N. 49° 30′ E. 550 ft., to post No. 3; thence N. 41° 15′ E., 1,300 ft., to post No. 4; thence N. 23° W. 50 ft., to post No. 5; thence S. 41° 15′ W., 1,300 ft., to post No. 6; thence S. 49° 30′ W. 550 ft., to post No. 7; thence S. 67° W. W. 950 ft., to post No. 8; thence S. 23° E. 50 ft., to place of beginning, contains 2. 35 acres and located in the SW. ¼ Sec. 20 & SE. ¼ Sec. 19, T. 4 S., R. 74 W. Discovery located 1,300 feet west of eastern boundary of said claim, adjoining claimants unknown. To be found in the records of Clear Creek County, Colorado Territory, in Book W, page 188, as set forth in the foregoing plat; and we do hereby give further notice that, having occupied and improved the said lode, according to the local customs and rules of miners in said mining district, and having expended in actual labor and improvement thereon, an amount not less than the five hundred dollars, and being in the quiet and peaceable possession thereof, we will apply for a survey and plat of

said premises, and a patent for the same under the act of Congress approved May 10, 1872.

Witness our hand and seal this 12th day of December, 1872.

253 We hereby certify that we have, this 12th day of December, 1872, posted in a conspicuous place on the above claim a true copy of this plat and notice.

ERSKINE McCLELLAN. [SEAL.]
JOSEPH RIST. [SEAL.]
WALTER N. WEBSTER. [SEAL.]
JOSEPH B. JOHNSON. [SEAL.]
WILLIAM H. LANE. [SEAL.]

Attest:
F. F. BRUNE.

(Endorsed:) Cayuga Lode. Erskine McClellan et al. Proof of posting plat and notice. U. S. land office, Central City, Colorado, Dec. 14, 1872. Approved, , register; Wm. A. Arnold, receiver.

(Here follows diagram, marked page 254.)

255 No. 231. Transcript of field-notes of survey of the McClellan, Webster & Rist claim upon the Cayuga Lode, in Griffith mining district, Clear Creek County, C. T. Surveyed by Francis F. Brune, U. S. deputy surveyor, mineral dist. No. 2.

Beginning at the SW. cor. Sec. 19, T. 4 S., R. 74 W., Va. 15° 30′ E., feet; thence N. 80° E.

4240. Established cor. No. 1, being a post in mound of sto. marked No. 1 & 231, from which peak of Independent Mt. bears S. 64° E., peak south of Clear Lake S. 21° 30′ E.; thence N. 67° E.

950. Set a post in mound of sto. marked No. 2 & 231, from which the smoke-stack of Equator Mining Co.'s engine-house bears N. 66° 30′ E.; thence N. 49° 30′ E.

550. Set a post in mound of sto. marked No. 3 & 231; thence N. 41° 15′ E.

462. Intersect S. line of mineral survey No. 229, Saco Lode.

644. Intersect S. line of mineral survey No. 185, Indigo Lode.

256 683. Intersect E line of same.

1080. Intersect E line of mineral survey No. 229, Saco Lode.

1300. Set a post in mound of sto. marked No. 4 & 231, from which peak of Independent Mt. bears S. 36° 45′ E., and the water-wheel of Pifford's Mill, on Leavenworth Creek, S. 2° E.; thence N. 23° W.

50. A cliff of rocks marked No. 5 & 231; thence S. 41° 15′ E.

648. Intersect N. line mineral survey No. 185, Indigo Lode.

708. Intersect S. line of same.

774. Intersect N. line of mineral survey No. 229, Saco Lode, and also S. line of mineral survey No. 204, Hidden Treasure Lode.

1105. Intersect W. line of mineral survey No. 229, Saco Lode.

1141. Intersect W. line of mineral survey No. 204, Hidden Treasure Lode.

1300. Set a post in mound of stone marked No. 6 & 231, from which

Proof of posting plat and notice.

Joseph B. Johnson and William H. Lane, each for himself and not one for the other, being first duly sworn according to law, deposes and says that he is a citizen of the United States over the age of twenty-one years, and was present on the twelfth day of December, 1872, when a plat representing Erskine McClellan, Walter N. Webster, and Joseph Rist, claim upon the Cayuga Lode, situate in Griffith mining district, Clear Creek County, and Territory of Colorado, together with notice of said Erskine McClellan, Walter N. Webster, and Joseph Rist's intention to apply for a survey and patent therefor, was posted in
251 a conspicuous place on said mining claim, to wit, upon a board placed near the discovery shaft, where it could be easily seen and examined, and a true, full, and correct copy of said plat and notice is hereto attached and made a part of this affidavit.

JOSEPH B. JOHNSON.
WILLIAM H. LANE.

Subscribed and sworn to before me this 12th day of December, A. D. 1872, and I hereby certify that I consider the above deponents credible and reliable witnesses, and that the foregoing affidavit, to which a full, true, and correct copy of the plat and notice referred to, were attached at the time, was read and examined by each of them before their signatures were affixed thereto, and the oath made by them.

[SEAL.] HENRY C. HARRINGTON,
Notary Public.

Notice is hereby given that we, Erskine McClellan, Walter N. Webstr, and Joseph Rist, do claim by purchase twenty-eight hundred (2,800) feet in length by fifty (50) feet in width, of surface ground on the Cayuga Lode, being a silver bearing vein of rock in place, and situated in the mining district county and territory aforesaid, the location and extent thereof being more fully described as follows, to wit: Beginning at the SW. cor.
252 Sec. 19, T. 4 S., R. 74 W., var. 15° 30′ E.; thence N. 80° E. 4,240 ft., established post No 1, being a post in mound of stones marked No. 1 & 231, from which peak of Independent Mt. bears S. 64° E., peak S. of Clear Lake, S. 21° 30′ E.; thence N. 67° E. 950 ft., to post No. 2; thence N. 49° 30′ E. 550 ft., to post No. 3; thence N. 41° 15′ E., 1,300 ft., to post No. 4; thence N. 23° W. 50 ft., to post No. 5; thence S. 41° 15′ W., 1,300 ft., to post No. 6; thence S. 49° 30′ W. 550 ft., to post No. 7; thence S. 67° W. W. 950 ft., to post No. 8; thence S. 23° E. 50 ft., to place of beginning, contains 2. 35 acres and located in the SW. ¼ Sec. 20 & SE. ¼ Sec. 19, T. 4 S., R. 74 W. Discovery located 1,300 feet west of eastern boundary of said claim, adjoining claimants unknown. To be found in the records of Clear Creek County, Colorado Territory, in Book W, page 188, as set forth in the foregoing plat; and we do hereby give further notice that, having occupied and improved the said lode, according to the local customs and rules of miners in said mining district, and having expended in actual labor and improvement thereon, an amount not less than the five hundred dollars, and being in the quiet and peaceable possession thereof, we will apply for a survey and plat of

said premises, and a patent for the same under the act of Congress approved May 10, 1872.

Witness our hand and seal this 12th day of December, 1872.

253 We hereby certify that we have, this 12th day of December, 1872, posted in a conspicuous place on the above claim a true copy of this plat and notice.

ERSKINE McCLELLAN. [SEAL.]
JOSEPH RIST. [SEAL.]
WALTER N. WEBSTER. [SEAL.]
JOSEPH B. JOHNSON. [SEAL.]
WILLIAM H. LANE. [SEAL.]

Attest:
F. F. BRUNE.

(Endorsed:) Cayuga Lode. Erskine McClellan et al. Proof of posting plat and notice. U. S. land office, Central City, Colorado, Dec. 14, 1872. Approved, , register; Wm. A. Arnold, receiver.

(Here follows diagram, marked page 254.)

255 No. 231. Transcript of field-notes of survey of the McClellan, Webster & Rist claim upon the Cayuga Lode, in Griffith mining district, Clear Creek County, C. T. Surveyed by Francis F. Brune, U. S. deputy surveyor, mineral dist. No. 2.

Beginning at the SW. cor. Sec. 19, T. 4 S., R. 74 W., Va. 15° 30′ E., feet; thence N. 80° E.

4240. Established cor. No. 1, being a post in mound of sto. marked No. 1 & 231, from which peak of Independent Mt. bears S. 64° E., peak south of Clear Lake S. 21° 30′ E.; thence N. 67° E.

950. Set a post in mound of sto. marked No. 2 & 231, from which the smoke-stack of Equator Mining Co.'s engine-house bears N. 66° 30′ E.; thence N. 49° 30′ E.

550. Set a post in mound of sto. marked No. 3 & 231; thence N. 41° 15′ E.

462. Intersect S. line of mineral survey No. 229, Saco Lode.

644. Intersect S. line of mineral survey No. 185, Indigo Lode.

256 683. Intersect E line of same.

1080. Intersect E line of mineral survey No. 229, Saco Lode.

1300. Set a post in mound of sto. marked No. 4 & 231, from which peak of Independent Mt. bears S. 36° 45′ E., and the water-wheel of Pifford's Mill, on Leavenworth Creek, S. 2° E.; thence N. 23° W.

50. A cliff of rocks marked No. 5 & 231; thence S. 41° 15′ E.

648. Intersect N. line mineral survey No. 185, Indigo Lode.

708. Intersect S. line of same.

774. Intersect N. line of mineral survey No. 229, Saco Lode, and also S. line of mineral survey No. 204, Hidden Treasure Lode.

1105. Intersect W. line of mineral survey No. 229, Saco Lode.

1141. Intersect W. line of mineral survey No. 204, Hidden Treasure Lode.

1300. Set a post in mound of stone marked No. 6 & 231, from which

post No. 4 of mineral survey No. 229, Saco Lode, bears N. 34° 45′ E., 1,715 ft. dist.; thence S. 49° 30′ W.

550. Set a post in mound of stone marked No. 7 & 231; thence S. 67° W.

257 950. Set a post in mound of stone marked No. 8 & 231; thence S. 23° E.

50. To place of beginning, containing 2.35 acres, and located in SE. ¼ Sec. 19, SW. ¼ Sec. 20, T. 4 S., R. 74 W.

General description.

It is a silver-bearing lode situated on Leavenworth Mt. . The discovery shaft is 40 ft. deep and 1,500 ft. easterly from the western boundary of said claim. Its improvements consist in two other shafts 80 ft. deep and cross-cut tunnel 90 ft. in length, which intersects the vein at discovery. The value of the labor and improvements upon the said claim is not less than five hundred dollars.

A list of the names of the individuals employed to assist in running, measuring, or marking the lines and corners described in the foregoing field-notes of the McClellan, Webster & Rist claim upon the Cayuga Lode: Erskine McClellan, Walter N. Webster, William J. Puples.

We do hereby certify that we assisted Francis J. Brune, deputy surveyor, in surveying McClellan, Webster & Rist claim upon the Cayuga
258 Lode, and that said lode has been in all respects to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments planted according to instructions furnished by the surveyor-general.

(Signed) ERSKINE McCLELLAN.
WALTER N. WEBSTER.
WILLIAM J. PUPLES.

Subscribed by the above-named person and sworn to before me this 25th day of November, 1872.

JOHN A. COULTER,
Notary Public.

I, Francis J. Brune, deputy surveyor, do solemnly swear that, in pursuance of an order from William H. Lessig, surveyor of the public lands of the United States in the Territory of Colorado, bearing date 20th day of November, 1872, and in strict conformity to the laws of the United States, and the instruction furnished by said surveyor-general, I have faithfully surveyed the McClellan, Webster & Rist claim upon the Cayuga Lode, and do further solemnly swear that the foregoing are the true field-notes of such survey.

FRANCIS F. BRUNE,
Deputy Surveyor.

Subscribed by the said Francis F. Brune, deputy surveyor, and sworn to before me this 25th day of November, 1872.

JOHN A. COULTER,
Notary Public.

259 I certify that the foregoing transcript of the field-notes of the survey of the McClellan, Webster & Rist mining claim, situated in Griffith mining district, cou'ty of Clear Creek, and Territory of Colorado, has been correctly copied from the original notes of said survey on file in this office; that said field-notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects and permanent monuments as will perpetuate and fix the locus thereof. I further certify that the value of the labor and improvements upon the said mining claim as not less than five hundred dollars, and that the plat thereof filed in the U. S. land office at Central City is correct and in conformity with the foregoing field-notes.

U. S. surveyor-general's office, Denver, Colorado, December 5, 1872.

W. H. LESSIG,
U. S. Surveyor-General of Colorado.

(Endorsed:) Cayuga Lode. Erskine McClellan et al. Proof of possession and field-notes of survey.

U. S. LAND OFFICE,
Central City, Colorado, Mar. 8, 1873.

260 I hereby certify that a plat of and application for patent for the mining claim of Erskine McClellan et al., consisting of 2,800 linear feet of the Cayuga Lode, situate in Griffith mg. dist., Clear Creek County, Colorado, was filed in this office on the 14th day of Dec., 1872.

I further certify that the published notice of the intention of the said Erskine McClellan et al., to apply for patent for the said claim was posted in my office on the 30th day of Dec., 1873, and remained there posted the full period of sixty (60) days.

I further certify that a copy of the plat and notice posted on said claim was also posted in my office on the 14th day of Dec., 1872, and remained there posted until the 27th day of Feb., 1873.

SAMUEL P. LATHROP,
Register.

(Endorsed:) Cayuga Lode. Erskine McClellan et al. Register's certificate of posting published notice and plat & notice in his office.

GEORGETOWN, COLORADO, *May* 31, 1875.

To Alex Cree, proprietor of the Colorado Miner.

Publishing Cayuga Lode, ten weeks..... ..... $20 00
Paid.

361 *Certificate of publication.*

I, Alex. Cree, do hereby certify that I am one of the proprietors and publishers of the Colorado Miner, a newspaper published in Georgetown, in the county of Clear Creek and Territory of Colorado, and that the

annexed notice was published in said paper once each week for ten consecutive weeks, the first publication being on the 19 day of December, A. 1872, and the least publication being on the 27 day of February, A. D. 1873.

ALEX. CREE.

Subscribed and sworn to before me this 31 day of May, 1875.
[SEAL.] W. H. SNELL,
Notary Public.

Land office notice.

U. S. LAND OFFICE,
Central City, Colorado, Dec. 14th, 1872.

Notice is hereby given that Erskine McClellan, Joseph Rist, and Walter N. Webster claim by purchase twenty-eight hundred (2,800) linear feet of the Cayuga Lode, with fifty feet in width of surface ground it being a silver-bearing vein of rock in place, and situated on unsurveyed lands, in Griffith mining district, county of Clear Creek and Territory of Colorado, being more fully described as follows, to wit:

Beginning at the SW. corner of Section 19, Tp. 4 S., R. 74 W.
262 (varies 15° 30′ E.); thence N. 80° E. 4,240 feet established post No. 1, being a post in mound of stone marked "No. 1 and 231," from which peak of Independent Mountain bears S. 64° E., and peak S. of Clear Lake bears S. 21° 30′ E.; thence N. 67° E. 950 feet to post No. 2; thence N. 49° 30′ E. 550 feet to post No. 3; thence N. 41° 15′ E. 1,300 feet to post No. 4; thence N. 23° W. 50 ft. to post No. 5; thence S. 41° 15′ W. 1,300 feet to post No. 6; thence S. 49° 30′ W. 550 feet to post No. 7; thence S. 67° W. 950 feet to post No. 8; thence S. 23° E. 50 feet to place of beginning, contains 2 $\frac{35}{100}$ acres of ground.

Discovery is located 1,300 feet west of the eastern boundary of said claim.

Adjoining claimants unknown.

To be found of record in the records of Clear Creek County, Colorado Territory, in book U, page 188.

They have this day filed in this office a plat and field-notes of survey of the same, together with notice of intention to apply for a patent therefor, as provided in an act of Congress approved May 10th, 1872.

W. 32-10t.

SAMUEL P. LATHORP,
Register.

DECEMBER 19*th*, 1872.

(Endorsed:) Cayuga Lode. Erskine McClellan et al. Proof of publication. Filed in the U. S. land office, Central City, Colorado, June 1st, 1875. Jas. M. Marshall, register, E. N. Henderson, receiver.
263 Proof of plat and notice remaining posted sixty days.

Erskine McClellan, being first duly sworn according to law, deposes and says that he is a citizen of the United States, over the age of twenty-one years, and was present on about the 12th day of December, 1872, when a plat representing the Erskine McClellan, Joseph Rist, and Walter

N. Webster claim upon the Cayuga Lode, situate in Griffith mining district, Clear Creek County and State of Colorado, together with notice of said Erskine McClellan, Joseph Rist, and Walter N. Webster' intention to apply for a survey and patent therefor was posted in a conspicuous place on said mining claim, to wit, upon a board near the discovery shaft, where it could be easily seen and examined, and that said plat and notice remained so posted continuously from said date of posting, and during the full period of publication.

ERSKINE McCLELLAN.

Subscribed and sworn to before me this 28 day of Nov., A. D. 1881, and I hereby certify that I consider the above deponent a credible and reliable witness, and that the foregoing affidavit was read and examined by him before his signature was affixed thereto and the oath made by him.

[SEAL.] J. S. RANDALL,
Notary Public.

264 (Endorsed:) Proof of plat and notice remaining posted sixty days. Cayuga Lode. Erskine McClellan et al. U. S. land office, Central City, Colorado. Filed this 30 day of November, 1881. Richard Harvey, register, E. N. Henderson, receiver.

I, the undersigned, publisher and proprietor of the "Colorado Miner," a weekly newspaper published at Georgetown, Clear Creek County, Territory of Colorado, hereby agree to publish a notice dated U. S. Land Office, Clear Creek, Colorado, Dec. 14th, 1872, required by act of Congress, approved May 10, 1872, of the intention of Erskine McClellan, Joseph Rist, and Walter N. Webster to apply for patent for their claim on the Cayuga Lode, situated in Griffith mining district, county of Clear Creek, Territory aforesaid, and to hold the said Erskine McClellan et al. alone responsible for the amount of my bill for publishing the same. And it is hereby expressly stipulated and agreed that no claim shall be made against the Government of the United States, or its officers or agents, for such publication.

Witness my hand this 14 day of Dec., A. D. 1872.

ALEX. CREE.

Witness:
WM. H. KELLEY.

(Endorsed:) Bayuga Lode. Erskine McClellan. Agreement
265 of publishers. U. S. land office, Central City, Colorado, Dec. 16, 1872. App'd. Samuel P. Lathrop, register, receiver. S. 54457.

G. W. LITTLE, *J. P.* [SEAL.]

COLORADO TERRITORY,
Larimer County:

I, the undersigned clerk in and for said county, certify that G. W. Little, whose name appears to the foregoing certificate of acknowledgment, is and was at the time of signing the same a justice of the peace in and for said county, and that all his official acts as such are entitled to full

credit; I am also acquainted with his handwriting, and believe the said signature to be genuine.

Witness my hand and the seal of said county at office in Fort Collins the 31 day of March, A. D. 1873.

[SEAL.] J. C. MATTHEENS,
Clerk.

I, Joseph Rist, do hereby authorize Hugh Butler, esq., of Central City, to withdraw the application for patent on the Cayuga Lode to the extent of my interest therein, such application never having been authorized by me, and to take all proper steps for such purpose.

JOSEPH RIST.

266 BIG THOMPSON, COLORADO TERRITORY,
County of Larimer, March 29th, 1873.

G. W. Litle, a justice peace in and for said county, do hereby certify that Joseph Rist, personally known to me as the person whose name is subscribed to the above, appeared before me this day in person and acknowledged that he signed and delivered the above instrument of writing for the *the* purpose set forth therein.

Given under my hand and seal this 29th day of March, A. D. 1873.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

Know all men by these presents that we, the undersigned, claim by right of discovery two hundred feet, and by right of location twenty-eight hundred additional feet, linear and horizontal measurement, on the Cayuga Lode, along the vein thereof, with all its dips, variations, and angles, together with the amount of surface necessary for working the same and allowed by law, fifteen hundred feet of said lode so located, lying and being northwest of the discovery shaft on said lode, and fifteen hundred feet being southeast of said shaft.

Said lode being situated about forty (40) rods north from the
267 discovery shaft on the Equator Lode, in Argentine mining district. (Rev. St., 70 C.)

Dated September 28th, 1867.

WALTER N. WEBSTER.	DAVID CLARK.
JAMES M. AMES.	JOHN MCDONALD.
SAMUEL F. YATES.	WILLIAM P. IRWIN.
ELIAS R. EVANS.	CHAS. W. BRAMEL.
STEPHEN BAXTER.	ARNE SIMEUS.
DEWITT M. WARREN.	WILLIAM CARROLL.
FRANK DESARNAI.	DAVID W. HANNA.

Attest:
A. G. THOMPSON.

Recorded Sept. 28th, 1867, at 5 o'clock p. m.

WM. SPRUANCE,
Recorder.

Book U, page 188.

Z. DRIPS,
Deputy Recorder.

No. 172–72. Abstract of title to the Cayuga Lode, situated in Argentine mining district, Clear Creek County, Colorado Territory. W. 506. Sept. 28, 1867.

Warren, Dewitt M.	:	Quit-claim due Sept. 28, 1867,
DeSanear, Frank	:	Conveys
Clark, David	:	All grantors interest
McDonald, John	:	being $1\frac{2}{14}$ of 3,000 feet.
Irwin, William P.	:	
Simeus, Arne	:	
Carroll, William	:	
Hanna, David W. (1)	:	David W. Hanna in body of
Bramel, Charles W.	:	deed, & D. M. Hanna in the
268 Yates, Lemuel F.	:	acknowledgment.
Evans, Elias R.		

Baxter, Stephen (2), to Webster, Walter N., Ames, James W. } (2) S. Butler in the acknowledgement.

1. 138. Jan. 9, 1869.

Rist, Joseph, *vs.* Ames, James W. } Writ of execution, Jan. 8, 1869, levied on undivided $\frac{1}{2}$.

1. 422. Feb. 22, 1869.

Ames, James W., by sheriff, to Ochinwand, Frederick W. } Certificate of sale, Feb. 18, 1869. Same property as last.

6. 336. Dec. 15.

Ames, James W., by sheriff, 1869. Schierbrand, Frederick W. } Sheriff deed, Dec. 15, 1869. Conveys same as last.

6. 339. Dec. 16, 1869.

Schierbrand, F. W., to Rist, Joseph. } Quit-claim deed, Dec. 13, 1869. Conveys same as last.

17. 346. Feb. 23, 1872.

Rist, Joseph, to McClellan, Erskine. { Quit-claim deed, Feb. 23, 1872, conveys undivided $\frac{1}{2}$ of grantor's interest in certain lode property described in sheriff deed from James W. Ames to F. W. Schierbrand, recorded 6, 336, Dec. 15, 1869, & afterward by Schierbrand to Joseph Rist, by deed recorded 6, 339, deed 6, 1869.

269 17. 348. Feb. 24, 1872.

Webster, Walter N., to McClellan, Erskine. } Quit-claim deed, Jan. 15, 1872, conveys undivided ¼ of grantor's interest, said interest being undivided ½.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

We do hereby certify that the foregoing abstract is taken from the record of said county, and that the title to said Cayuga Lode, as there'n set forth, is correctly taken from said records.

Witness our names and seals this 2n' day of December, A. D. 1872, at 6 o'clock p. m.

[SEAL.] SAYR & PARMELEE.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

I, Wm. Spruance, clerk, &c., of said county, do hereby certify that the foregoing abstract is taken from the records of this office, and that the title to said Cayuga Lode, as therein set forth, is correctly taken from said records, & that the annexed is a true copy of the pre-emption of said lode.

Given under my hand and seal of said county this 2d day of December, A. D. 1872, at 6 o'clock p. m.

[SEAL.] WM. SPRUANCE,
Clerk & Recorder.

270 (Endorsed:) No. 17272. Abstract of title to Cayuga Lode, Argentine district. Erskine McClellan et al. U. S. land office, Central City, Colorado. Approved Dec. 14, 1872. 1 54457. & register. W. A. Arnold, receiver.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

Erskine McClellan, being first duly sworn, deposes and says that he is over the age of twenty-one years; that he is the same person that is associated with Walter N. Webster and Joseph Rist in application for U. S. patent for their claim of 2,300 feet in length, with 50 ft. in width, of surface ground of the Cayuga Lode, situate in Griffith mining district, county of Clear Creek, Colorado, under the provisions of the mining act of Congress approved May 10th, 1872.

This affiant further deposes and says that he is a native-born citizen of the United States, born in the County of Alleghany, State of Pennsylvania.

ERSKINE McCLELLAN.

Subscribed and sworn to before me this 12th day of December, A. D. 1872.

HENRY C. HARRINGTON,
Notary Public.

Cayuga Lode. Erskine McClellan et al. Proof of citizenship of Erskine McClellan. U. S. land office, Central City, Colorado. Dec.
271 14, 1872. , register. W. A. Arnold, receiver.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

Walter N. Webster, being first duly sworn, deposes and says that he is over the age of twenty-one years; that he is the same person that is associated with Joseph Rist and Erskine McClellan in application for U. S. patent for their claim of 2,300 feet in length, with 50 ft. in width, of surface ground of the Cayuga Lode, situate in Griffith mining district, county of Clear Creek, Colorado, under the provisions of the mining act of Congress approved May 10th, 1872.

This affiant further deposes and says that he is a native-born citizen of the United States, born in the county of Ontario, State of New York.

WALTER N. WEBSTER.

Subscribed and sworn to before me this 12th day of December, A. D. 1872.

[SEAL.] HENRY C. HARRINGTON,
Notary Public.

11. Cayuga Lode. Erskine McClellan et al. Proof of citizenship of Walter N. Webster. U. S. land office, Central City, Colorado.
272 Approved Dec. 14, 1872. , register. Wm. A. Arnold, receiver.

STATE OF COLORADO,
County of Arapahoe, ss:

Mrs. Sarah Rist, being first duly sworn according to law, deposes and says that Joseph Rist was her husband, and that he, the said Joseph Rist, was a citizen of the United States, having been born near Broadford, Fayette County, in the State of Pennsylvania, and resided within the United States during his entire life, and had for two years prior to his death been a resident of Denver, Colorado.

Sworn and subscribed to before me this 23d day of January, A. D. 1872.

[SEAL.] JAS. L. CROTTEY,
Notary Public.

STATE OF COLORADO,
Cleer Creek County, ss:

Erskine McClellan, being first duly sworn according to law, deposes and and says that the above-named Joseph Rist is the applicant for survey number 231, on Cayuga Lode or mining claim, situate in Griffith, mining district, county of Clear Creek, Colorado, and that he is or was a natural born citizen of the United States, born in the county of Fayette, State of Pennsylvania, and at the time of said application was
273 21 years of age, and also the same Joseph Rist named in the above affidavit.

ERSKINE McCLELLAN.

Subscribed and sworn to before me this 24th day of January, A. D. 1842.

CHAS. R. FISH,
Notary Public.

12. Proof of citizenship. Joseph Rist, Cayuga Lode. U. S. land office, Central City, Colorado. Filed Jan'y 26, 1882. Richard Harvey, register.

STATE OF COLORADO,
Clear Creek County, ss:

I, S. S. Horton, clerk & recorder of said county, do hereby certify that there has been no conveyance from Erskine McClellan, Joseph Rist, nor Walter N. Webster, conveying the Cayuga Lode, since the second (2nd) day of December, 1882.

Witness my hand and official seal this 25th day of November, 1881.

[SEAL.] S. S. HORTON,
Clerk & Recorder.

(Endorsed:) Certificate on Cayuga Lode. Grif. dist. 50 cts. U. S. land office, Central City, Colo. Filed Nov. 30, 1881. Richard Harvey, register. E. W. Henderson, receiver.

273½ U. S. LAND OFFICE,
Central City, Colorado, April 30, 1873.

ERSKINE MCCLELLAN ET AL.
Georgetown, Colorado:

GENTLEMEN: You are hereby notified that on the 28th inst. Joseph Rist, by his attorney, Hugh Butler, filed in this office a withdrawal of his interest in the application for patent for 2,300 linear feet of the Cayuga Lode, and alleging that he never gave his consent to such application, and that he signed no papers in said case himself, and gave no one authority to sign for him. Since Mr. Rist owns an undivided interest in the property applied for, the effect of his withdrawal is to render the entire application null and void, and it is ruled by this office that no application is now pending, for the said Cayuga Lode, or any part thereof. Appeal may be taken from this decision.

Respectfully,

SAMUEL P. LATHROP,
Register.

WM. A. AINOLD,
Receiver.

(Endorsed:) Copy of a letter from R. & R., Central City, to Erskine McClellan et al.

274 Whereas Erskine McClellan, Joseph Rist, and Walter N. Webster, did on the 14th day of December, 1872, file in the land office of the United States, at Central City, Colorado, a plat of a certain Lode, named and called therein the Cayuga Lode, and described as situate in Griffith mining district, Clear Creek County, Colorado Territory; and whereas the said Erskine McClellan, et al. did at the same time and place give notice that they would apply for patent for 2,800 linear feet of the said lode, more fully described as follows, to wit:

"Beginning at the SW. corner of Sect. 19, Tp. 4 S., R. 74 W. (va. 15° 30′ E.), thence N. 80° E. 4,240 established post No. 1, being a post in mound of stones marked No. 1 & 231, from which peak of Independent Mt. bears S. 64° E., Peak 3, of Clear Lake S. 21° 30′ E.; thence N. 67° E. 95 feet to post No. 2; thence N. 49° 39′ E. 55 feet to post No. 3; thence N. 41° 15′ E. 1,300 feet to post No. 4; thence N. 23° W. 50 feet to post No. 5; thence S. 41° 15′ W. 1,300 feet to post No. 6; thence

S. 49° 30′ W. 55 feet to post No. 7; thence S. 67° W. 95 feet to post No. 8; thence S. 23° E. 50 feet to place of beginning; contains 2.35 acres, and located in the SE. ¼ Sect. 19, & SW. ¼ Sect. 20, Tp. 4 S., R. 74 W. Discovery located 1,300 feet west of eastern boundary of said claim. Adjoining claimants unknown. To be found in the records of Clear Creek County, Colorado Territory, in Book U, page 188."

275, 276 Now, therefore, be it known that I, Francis J. Marshall, a citizen of the United States, over the age of twenty-one years, a stockholder in and president of the Marshall Silver Mining Company of Georgetown, for myself and in behalf of the said company, hereby protest against the issuing of patent to the said applicants Erskine McClellan et al, as per their said application, for the following reasons, to wit:

The property so claimed and applied for, or a portion of the same, is not the property of the said applicants, nor are they entitled to hold the same under and by virtue of the rules, customs, and laws of miners in the said Griffith mining district, the laws of Colorado, and the mining acts of Congress, a portion of the property so applied for being owned by the said Marshall Silver Mining Co. of Georgetown, being a part of the said co.'s property upon the Tunnel Lode No. 5 "and Tunnel Lode No. 6," situate in the said Griffith mining district.

Affiant further deposes and says that the shaft claimed by the said applicants as discovery shaft, upon the said so-called Cayuga Lode, shows no defined vein or lode, nor is there any shaft upon the territory claimed by them and sunk by them in which a mineral-bearing crevice is shown; that the two shafts shown upon the plat of the survey of the said so-called Cayuga Lode, situate SW. from discovery shaft therein are shafts sunk by and belonging to the said Marshall Silver Mining Co., sunk

277 upon the said Tunnel Lode No. 5; that, as he verily believes, the said applicants having no vein or lode, have so set up a claim and made application for patent as to cover the said Tunnel Lode No. 5, with the intention of holding a large portion of the said Tunnel Lode No. 5 under the patent so applied for. Affiant further deposes and says that the said Marshall Silver ning Co., have the possessory right to the said Tunnel Lodes Nos. 5 & 6, and that they have the record title to 950 linear feet upon each of them, as will appear by reference to abstract of title thereto, filed herewith and marked Exhibit B; that the said co. has been from the date of the discovery thereof in the peaceable and undisputed possession of the property claimed by them upon the said Tunnel Lode Nos. 5 & 6, and also of the surface ground thereto belonging; that if patent should issue to the said applicants as per their said application he verily believes that the said Marshall Silver Min'g Co. would lose, or would be in great danger of being defrauded of, a large portion of the vein and surface ground of the said Tunnel Lode No. 5, and also a large part of surface ground of the said Tunnel Lode No. 6, with shaft-houses and all surface improvements thereon, as will appear by reference to a plat of the said so-called Cayuga Lode and the said Tunnel Lodes Nos. 5 & 6, filed herewith and marked Exhibit A.

278 Affiant further deposes and says that the said application is invalid and fraudulent in that there had not been expended upon the said so-called Cayuga Lode at the time the said application for patent was made, nor up to the present time has there been expended thereupon, the

amount required by law, viz, five hundred (500) dollars, and in that, as affiant verily believes, Joseph Rist, who is represented as one of said applicants, did not give his consent to the said application; that it was made without his knowledge, and his name was affixed to the papers in the case without any authority whatever; and inasmuch also as the said applicants did at the time the said application was made, make oath that they were in the peaceable possession of the premises so applied for, which to a very large extent they knew to be false.

Affiant further deposes and says that he verily believes the said application was not made in good faith, and that the whole transaction is fraudulent and the representation false.

Affiant further deposes and says that the adverse claim herein set up is true in substance and in fact; that it is made in good faith, and with no intention of interfering with any of the legal rights of the said Erskine McClellan et al., but that it is made only to protect the property of the said Marshall Silver M'g Co. of Georgetown.

FRANCIS J. MARSHALL.

MARSHALL SILVER MINING COMPANY OF GEORGETOWN,

279 By F. J. MARSHALL, *Pres't.*

Subscribed and sworn to by Francis J. Marshall before me, this 15th day of February, A. D. 1873.

SAMUEL P. LOTHROP.

(Endorsed:) Cayuga Lode. Erskine McClellan et al. Adverse claim of Marshall Silver M'g Co. of Georgetown. Filed in the U. S. land office at Central City, Colorado. Feb. 15, 1873. Samuel P. Lothrop, register.

(Here follows diagram marked p. 280.)

281, 282 TERRITORY OF COLORADO,
County of Clear Creek, ss:

I do hereby certify that there was this day commenced in district court of said county a suit in ejectment, brought by the Marshall Silver Mining Company of Georgetown against Erskine McClellan, Walter N. Webster, and Joseph Rist to recover possession of Lode No. 5, and of Lode No. 6, and of the Morning Star Lode, Griffith district, Clear Creek County, Colorado Territory, & that said suit is now pending in said court.

Witness J. R. Cleaveland, clerk said court, & the seal thereof, this 14th day of March, A. D. 1873.

[SEAL.] J. R. CLEAVELAND,
Clerk.
ED. C. PARMELEE,
Deputy.

283 (Endorsed:) Clerk's certificate. Marshall Sil. M'g Co. of Georgetown, vs. Erskine McClellan et al. Filed in the U. S. land office at Central City, Colorado. Mar. 15, 1873. Samuel P. Lathrop, register.

Proof of sums paid.

STATE OF COLORADO,
County of Clear Creek:

Erskine McClellan, having been first duly sworn according to law, deposes and says that he is a citizen of the United States, over the age of twenty-one years; that he is one of the applicants for patent to 2,800 feet upon the Cayuga Lode, in Griffith mining district, Clear Creek County, Colorado; that in the prosecution of such application he has paid the following sums of money, viz:

For office work in the surveyor-general's land office.....	$16 00
To F. F. Brune, deputy surveyor, for surveying and platting.. ..	$122 50
To register and receiver, for filing in local land office.....	$10 00
To A.Cree, publisher of Georgetown Miner, for publication of notice of application.....	18 00
To the receiver of local land office for land.....	

ERSKINE McCLELLAN.

Subscribed and sworn to before me this 28th day of Nov., 1881.

284 [SEAL.] J. S. RANDALL,
Notary Public.

(Endorsed:) Proofs of sums paid. Cayuga Lode. Erskine McClellan et al. U. S. land office, Central City, Colorado. Filed this 30th day of Nov., 1881. Richard Harvey, register; E. W. Henderson, receiver.

CENTRAL CITY, *April* 28, 1873.

To the register & receiver, U. S. land office, Central City:

GENTLEMEN: The application for patent on the Cayuga Lode filed in your office on the 14th day of December, A. D. 1872, in the names of Erskine McClellan, Walter N. Webster, and myself, was made and filed without my authority and consent, and the said application was not signed by me, nor by any person authorized to sign a name for me.

And I hereby repudiate said application, and ask that the same may be withdrawn so far as I am concerned, and all further proceedings thereunder suspended.

Witness my hand this 28th day of April, A. D. 1873.

285 JOSEPH RIST,
By HUGH BUTLER,
His Att'y in fact.

Cayuga Lode. E. McClellan. Withdrawal of Joseph Rist of his interest in the application for patent by his att'y in fact. Filed in the U. S. land office, Central City, Colorado, April 28, 1873. Samuel P. Lathrop, register. K 53, O 41. En os, No. 22.

I, Joseph Rist, do hereby authorize Hugh Butler, esq., of Central City, to withdraw the application for patent on the Cayuga Lode to the extent of my interest therein, such application never having been authorized by me, and to take all proper steps for such purpose.

JOSEPH RIST.

BIG THOMPSON, COLORADO TERRITORY,
County of Larimer, March 29th, 1873.

G. W. Litle, a justice peace in and for said county, do hereby certify that Joseph Rist, personally known to me as the person whose name is subscribed to the above, appeared before me this day in person and acknowledged that he signed and delivered the above instrument of writing for the purpose set forth therein.

286 Given under my hand and seal this 29th day of March, A. D. 1873.

G. W. LITLE, *J. P.* [SEAL.]

COLORADO TERRITORY,
Larimer County:

I, the undersigned clerk in and for said county, certify that G. W. Litle, whose name appears to the foregoing certificate of acknowledgment, is, & was at the time of signing the same, a justice of the peace in and for said county, and that all his official acts as such are entitled to full credit. I am also acquainted with his handwriting, and believe the said signature to be genuine.

Witness my hand and the seal of said county, at office in Fort Collins, the 31st day of March, A. D. 1873.

[SEAL.] J. C. MATTHEMS, *C'k.*

Pleas in the district court of Clear Creek County before James B. Belford, judge of the district court of the second judicial district of the Territory of Colorado.

MARSHALL SILVER MINING COMPANY
vs.
ERSKINE MCCLELLAN. } Ejectment.

Be it remembered that heretofore, to wit, on the 14th day of March, A. D. 1873, the said plaintiff, by its attorneys, filed in the office of the
287 clerk of said court its declaration in said cause, in words and figures following, to wit:

TERRITORY OF COLORADO,
County of Clear Creek, ss:

In the district court of the second judicial district of said Territory in and for said county to the April term, A. D. 1873.

The Marshall Silver Mining Company of Georgetown, a corporation organized under the laws of said Territory, plaintiff in this suit, by Butle & Morrison, their attorneys, complain of Erskine McClellan, Walter N. Webster, and Joseph Rist, of a plea wherefore they defendants, with force and arms, entered into the following described premises, situate on the east side of Leavenworth Mountain, in Griffith mining district, county of Clear Creek, Territory of Colorado.

For that heretofore, to wit, on the thirteenth day of March, in the year of our Lord one thousand eight hundred and seventy-one, the plaintiff was possessed of certain premises described as follows, to wit, nine hundred and fifty feet in length, by fifty feet in breadth, on Lode No. 5; two hundred and fifty on said lode running easterly, and seven hundred feet

on the same lying westerly from the centre of discovery, said lode being further situate in the Marshall Tunnel, crossing the same thirty-nine feet northwesterly from the centre of drift in said tunnel on Lode num-
288 ber 4, in said tunnel, also nine hundred and fifty feet on lode number 6, in said tunnel, in length and fifty feet in breadth, 250 feet on said lode number 6, running easterly, and seven hundred feet on the same running westerly, from centre of discovery, said lode being further situate in the Marshall Tunnel, crossing the same forty-eight (48) feet northwesterly from the centre of drift, on said Lode number 5 in said tunnel, and they, the plaintiff, being so possessed, they, the defendant, afterwards, to wit, on the fourteenth day of February, A. D. 1873, entered into said premises and that they unlawfully withhold from the plaintiff the possession thereof, and the plaintiff claims the right to occupy and possess the said premises under the laws of the United States, and of the Territory of Colorado by pre-emption.

Wherefore, plaintiff saith they are injured and have sustained damages, to a large amount, to wit, five hundred dollars, and therefore they bring suit, &c.

And also for that heretofore, to wit, on the 13th day of March, A. D. 1871, the plaintiff was possessed of certain other premises described as follows, to wit, nine hundred and fifty feet in length by fifty feet in width on Lode number 6, and nine hundred and fifty feet in length by fifty feet in width on Lode number 5 in the Marshall Tunnel; said lodes in this count described being intersected by said tunnel two hundred and fifty feet on each of said lodes running easterly, and seven hundred feet run-
289 ning westerly from centre line of said tunnel, and being so possessed, they, the defendants, on, to wit, the 14th day of February, A. D. 1873, entered into said premises in this count described, and that they, the defendants, unlawfully withhold from the plaintiff the possession thereof, and the plaintiff avers that they, the said plaintiff, claims the right to occupy and possess the said premises by right of purchase.

Wherefore the plaintiff says they are injured and have sustained damage to a large amount, to wit, five thousand dollars, and therefore they bring suit.

BUTLER & MORRISON,
Attorneys for Plaintiff.

Erased before filing, March 14, 1873.

R. S. MONIER.

And also for that heretofore, to wit, on the tenth day of July, A. D. 1872, the plaintiff was possessed of certain other premises, described as follows, to wit, seven hundred feet in length by fifty feet in width on the Morning Star Lode, commencing at a point on said lode two hundred and fifty feet east of the point where the Marshall tunnel cuts the said Morning Star Lode, and extending thence along the line of the vein of said lode seven hundred feet in a westerly direction, and being so possessed they, the said defendant, on, to wit, the fourteenth day of February, A. D. 1873, entered into said premises in this count described, and that
290 they, the defendants, unlawfully withhold from the plaintiff the possession thereof, and the plaintiff avers that the said plaintiff claims the right to occupy and possess the said premises by purchase under the laws of the United States and of the Territory of Colorado.

Wherefore the plaintiff saith they are injured and have sustained damage to a large amount, to wit, five thousand dollars, and therefore they bring suit.

BUTLER & MORRISON,
Attorneys for Plaintiff.

And upon the filing of said declaration summons was issued out of and under the seal of said court in words and figures following, to wit:

TERRITORY OF COLORADO,
Clear Creek County, ss:

The people of the Territory of Colorado to the sheriff of said county, greeting:

We command you that you summon Erskine McClellan, Walter N. Webster, and Joseph Rist, if they shall be found in your county, personally to be and appear before the district court of the second judicial district in and for Clear Creek County, on the first day of the next term thereof, to be holden at the court-house in Georgetown, in said county, on the first Tuesday of April next, to answer unto the Marshall Silver Mining Company of Georgetown in a plea of ejectment, to the damage
291 of said plaintiff, as it says, in the sum of fifteen thousand dollars, and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness J. R. Cleavland, clerk of our said court, and the seal thereof, at Georgetown aforesaid, this 14th day of March, A. D. 1873.

J. R. CLEAVLAND, *Clerk.*
ED. C. PARMELEE, *Deputy.*

Endorsed:

TERRITORY OF COLORADO,
County of Clear Creek, ss:

I have duly served the within by reading the same to the within named Erskine McClellan—W. N. Webster, Jos. Rist, not found in my county—this 20th day of March, 1873, as I am therein commanded.

P. O. S. KEOHUM, *Sheriff,*
By P. S. BAILEY, *Deputy.*

And afterwards, to wit, on the 30th day of January, A. D. 1874, it being in vacation before the June term of said court, 1874, the said plaintiff filed its order of dismissal in said cause, which was taken and entered of record in said court, as follows, to wit:

MARSHALL SILVER MINING CO.
292 *vs.*
ERSKINE MCCLELLAN ET AL.

In district court, Clear Creek County, in vacation.

The clerk of said court will please dismiss the above cause at the cost of plaintiff.

BUTLER & MORRISON,
Atty's for Plaintiff.

January 3d, 1874, to John R. Cleavland, clerk of said court. Costs paid.

STATE OF COLORADO,
County of Clear Creek, ss:

MARSHALL S. M. CO. vs. E. MCCLELLAN ET LA. } 881. Ejectment.

I, H. H. Atkins, clerk of the dist. court of Clear Creek County, do hereby certify the above to be the true copies of the declaration, summons and order of dismissal in the above entitled cause, as the same appear of record in my office, and that said suit is not now pending in said court.

Attest, my hand and the seal of said court this 5th day of Mar., 1881.

H. H. ATKINS, *Clerk.*

293 *Application to purchase.*

To the register and receiver, U. S. land office, at Central City, Colorado.

NOV. 30TH, 1881.

Mineral entry, No. 1778. Lot No. 231.

The undersigned applicant under the laws of Congress for a patent for what is known as the Cayuga Lode mining claim, embracing twenty-eight hundred (2,800) linear feet of the Cayuga vein or lode, with 2.35 acres of surface ground, the same being designated by the surveyor-general as lot No. 231 in the southeast ¼, Sec. 18, and southwest ¼ of Section 20, in township 4 south, of Range 74 west of the 6th principal meridian, in the Griffith mining district, Clear Creek County, State of Colorado, do hereby apply to purchase said mineral claim or lot of land, and agree with the register to pay fifteen (15) dollars, being the legal price thereof.

ERSKINE McCLELLAN.
JOSEPH RIST.
WALTER N. WEBSTER.

I, Richard Harvey, register of the land office at Central City, Colo., do hereby certify that the aforesaid mineral claim, or lot No. 231 is subject to entry by the above named applicants; the area being 2.35 acres, and the legal price thereof 15 dollars.

RICHARD HARVEY, *Register.*

294 (Endorsed:) Application to purchase. Case of the Cayuga Lode mining claim, lot No. 231 in T. 4 S., R. 74 west, in Griffith mining district, Clear Creek County, Colorado, claimed by Erskine McClellan et al.

Register's final certificate of entry.

U. S. LAND OFFICE AT CENTRAL CITY,
Colo., Nov. 30th, 1881.

Mineral entry No. 1778. Lot No. 231.

It is hereby certified that, in pursuance of the mining act of Congress approved July 26, 1866, and the acts amendatory thereof, approved July

9, 1870, and May 10, 1872, Erskine McClellan, Joseph Rist, and Walter N. Webster, whose post-office address is Georgetown, Clear Creek County, Colorado, on this day purchased that mineral claim or lot of land designated as survey No. 231, in the southeast ¼ of section 19 and southwest ¼ of Section 20, in Township No. 4 south, of range 74 west of 6th meridian, situate, lying, and being in the Griffith mining district, in the County of Clear Creek, and State of Colorado, known as the Cayuga mining claim, embracing twenty-eight hundred (2,800) linear feet, with 2.35 acres of surface ground, as shown by said survey, for which the said Erskine
295 McClelland, Joseph Rist, and Walter N. Webster, have this day made payment to the receiver in full, amounting to the sum of fifteen (15) dollars.

Now, therefore, be it known that upon the presentation of this certificate to the Commissioner of the General Land Office, together with the plat, survey, and description of said claim, a patent shall issue thereupon to the said Erskine McClelland, Joseph Rist, and Walter N. Webster, if all be found regular.

RICHARD HARVEY,
Register.

(Across the face:) See Com. letter "N," Oct. 16th, 1881.

(Endorsed:) Register's final certificate of entry. Case of the Cayuga Lode mining claim of Erskine McClellan et al. upon the Cayuga Lode, being Lode No. 231 in T. 4 South of R. 74 West, Griffith mining district, Clear Creek County, Colorado, claimed by Erskine McClelland et al.

Receiver's receipt.

(Duplicate to be given the purchaser.)

U. S. LAND OFFICE AT CENTRAL CITY, COLORADO,
November 30, 1881.

Mineral entry No. 1778; lot No. 231.

Received from Erskine McClellan, Joseph Rist, and Walter N. Webster the sum of fifteen (15) dollars, the same being in full for the surface
296 area embraced by survey No. 231, in the Southeast ¼ of Sec. 19, *a* and Southwest ¼ of Section 20, in Township 4 South of Range No. 74 W. of 6th Principal Meridian, said mineral claim or lot of land being situate in Griffith mining district, county of Clear Creek and State of Colorado, and known as the Cayuga Lode mining claim, embracing 2.35 acres, as shown by said survey.

$15.00.

E. W. HENDERSON,
Receiver.

(Endorsed:) Receiver's receipt. Case of the Cayuga Lode mining claim, Lot No. 231 in T. 4 South, R. 74 South in Griffith mining district, Clear Creek County, Colorado, claimed by Erskine McClelland et al.

297 EXHIBIT B.—*John W. Webster, examiner.* D. K. S.

DEPARTMENT OF THE INTERIOR, H. F. C.,
GENERAL LAND OFFICE,
Washington, D. C., February 3, 1883.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of U. S. mineral patent No. 5288, for the claim of Erskine McClellan et al., upon the Cayuga Lode, Central City, Colorado land district, is a true and literal exemplification from the records of this office.

In testimony whereof I have hereuntó subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

{ SEAL U. S. GEN. LAND OFFICE. }

N. C. McFARLAND,
Commissioner of General Land Office.

298 THE UNITED STATES OF AMERICA.

General Land Office, No. 5288. Mineral certificat' No. 1778.

To all to whom these presents shall come, greeting:

Whereas in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of Erskine McClellan, Joseph Rist, and Walter N. Webster, upon the Cayuga Lode, accompanied by the certificate of the register of the land office at Central City, in the State of Colorado, whereby it appears that in pursuance of the Revised Statutes of the United States the said Erskine McClellan, Joseph Rist, and Walter N. Webster did, on the thirtieth day of November, A. D. 1881, enter and pay for said mining claim or premises, being mineral entry No. 1778, in the series of said office, designated by the surveyor-general as lot No. 231, embracing a portion of Sections nineteen (19) and twenty (20), in Township four (4) South of Range seventy-four (74) West of the sixth Principal Meridian in the Griffith mining district, in the county of Clear Creek and State of Colorado, in the district of lands subject to sale at Central City, containing two and thirty-five hundredths ($2\frac{35}{100}$) acres of land, more or less, and ac-

299 cording to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation of fifteen (15) degrees thirty (30) minutes east, to wit: Beginning at corner No. 1, a post in mound of stones, marked No. 1 & 231, from which the southwest corner of Section nineteen (19), in Township four (4) South of Range seventy-four (74) West of the sixth Principal Meridian, bears south eighty (80) degrees west, at the distance of forty-two hundred and forty (4,240) feet; thence from said corner No. 1 north sixty-seven (67) degrees east nine hundred and fifty (950) feet to corner No. 2, a post in mound of stones marked No. 2 & 231; thence north forty-nine (49) degrees thirty (30) minutes east five hundred and fifty (550) feet to corner No. 3, a post in mound of stones marked No. 3 & 231; thence north forty-one (41) degrees fifteen (15) minutes east four hundred and sixty-two (462) feet, to southerly boundary of survey No. 229, patented to Charles R. Fish with his

claim upon the Saco Lode, six hundred and forty-four (644) feet to southerly boundary of survey No. 185, patented to the Burlington Silver Mining Company with its claim upon the Indigo Lode, six hundred and eighty-three (683) feet to easterly boundary of said survey No. 185, ten hundred and eighty (1,080) feet to easterly boundary of said survey No. 229, thirteen hundred (1,300) feet to corner No. 4, a post in mound of stones marked No. 4 & 231; thence north twenty-three (23) degrees west fifty (50)
300 feet to corner No. 5 No. 5 & 231 marked on a cliff of rocks; thence south forty-one (41) degrees fifteen (15) minutes west six hundred and forty-eight (648) feet to northerly boundary of said survey No. 185, seven hundred and eight (708) feet to southerly boundary of said survey No. 185, seven hundred and seventy-four (774) feet to northerly boundary of said survey No. 229 and southerly boundary of survey No. 204, made for the claim of David E. Dulaney upon the Hidden Treasure Lode, eleven hundred and five (1,105) feet to westerly boundary of said survey No. 229, eleven hundred and forty-one (1,141) feet to westerly boundary of said survey No. 204, thirteen hundred (1,300) feet to corner No. 6, a post in mound of stones marked No. 6 & 231, from which post number 4 of said survey No. 229 bears north thirty-four (34) degrees forty-five (45) minutes east at the distance of one hundred and seventy-one and five-tenths ($171\frac{5}{10}$); thence from said corner No. 6 south forty-nine (49) degrees thirty (30) minutes west five hundred and fifty (550) feet to corner No. 7, a post in mound of stones marked No. 7 & 231; thence south sixty-seven (67) degrees west nine hundred and fifty (950) feet to corner No. 8, a post in mound of stones marked No. 8 & 231; thence south twenty-three (23) degrees east fifty (50) feet to the place of beginning, containing two and thirty-five hundredths ($2\frac{35}{100}$) acres of land, more or less, and embracing twenty-eight hundred (2,800) linear feet of the Cayuga Lode, to wit, thirteen
301 hundred (1,300) linear feet northeasterly and fifteen hundred (1,500) feet southwesterly from discovery shaft on said lode as represented by yellow shading in the following plat:

(Here follows diagram marked p 302.)

$302\frac{1}{2}$ Now know ye that the United States of America, in consideration of the premises and in conformity with the said Revised Statutes of the United States, have given and granted, and by these presents do give and grant, unto the said Erskine McClellan, Joseph Rist, and Walter N. Webster, and to their heirs and assigns, the said mining premises hereinbefore described as lot No. 231, embracing a portion of Sections nineteen (19) and twenty (20) in Township four (4) South of Range seventy-four (74) West of the sixth Principal Meridian, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey and not herein expressly excepted from these presents, and of twenty-eight hundred (2,800) linear feet of the said Cayuga vein, lode, ledge, or deposit for the length hereinbefore described throughout its entire depth, although it may enter the land adjoining; and also of all other veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior lines of said survey at the surface extending downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: Provided, That the right of

possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between
303 vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits, excepting and excluding, however, from these presents all that portion of the surface ground hereinbefore described which is embraced by said surveys Nos. 185, 204, and 229.

And provided further, That nothing in this conveyance shall authorize the grantees herein, their heirs or assigns, to enter upon the surface of a mining claim owned or possessed by another: To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said Erskine McClellan, Joseph Rist, and Walter N. Webster, and to their heirs and assigns forever, subject nevertheless to the following conditions and stipulations:

First. That the grant hereby made is restricted to the land hereinbefore described as lot No. 231, with twenty-eight hundred (2,800) linear feet of the Cayuga vein, lode, ledge, or deposit for the length aforesaid throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depth as aforesaid, the tops or apexes of which lie inside the exterior lines of said survey.

304 Second. That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit.

Third. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

Fourth. That in the absence of necessary legislation by Congress, the legislature of Colorado may provide rules for working the mining claims or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Chester A. Arthur, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

304½ Given under my hand at the city of Washington, the thirty-first day of January, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and sixth.

CHESTER A. ARTHUR.

By the President:
By WM. H. CROOK, *Secretary.*
[SEAL.]

S. W. CLARK,
Recorder of the General Land Office.

Recorded, vol. 68, pages 73 to 78 inclusive. Examined.

EXHIBIT C.—*John N. Webster, examiner.* D. K. S.

DEPARTMENT OF THE INTERIOR, H. F. C.
GENERAL LAND OFFICE,
Washington, D. C., February 3, 1883.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of all the papers in the matter of Central City, Colorado, mineral entry No. 358, for the claim of the Marshall Silver Mining Company, of Georgetown, upon the Tunnel Lode No.
305 5, is a true and literal exemplification from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

{ SEAL U. S. GEN. LAND OFFICE. }

N. C. McFARLAND,
Commissioner of General Land Office.

No. 18872. Abstract of title to the Number 5 Lode, in Griffith district, Clear Creek County, Colorado Territory. Number 5, Number 6, & Number 7 Lode, Griffith dist.

TERRITORY OF COLORADO,
Clear Creek County, ss:

Know all men by these presents that we, the undersigned, claim by right of location fourteen hundred feet linear and horizontal measurement on the Number 5 Lode along the vein thereof, with all its dips, variations, and angles, together with the amount of surface necessary for working the same and allowed by law; seven hundred feet of said lode so located lying and being easterly of the discovery of said lode, and seven hundred feet being westerly of said discovery shaft of said lode, being situated
306 in the Marshall Silver Mining Company Tunnel, on east side of Leavenworth Mountain, thirty-nine feet from centre of drift, on Lode No. 4 north 43° west°, in Griffith mining district, dated March 13, 1871.

[Revenue stamp, 35c.]

JOHN M. NADES.
CHARLES T. BELLAMY.
THOS. B. EARLY.
JAMES W. DRIPS.
JOHN C. McCOY.
BENJ. F. NAPHEYS.
JESSEE S. RANDALL.

Book 2, page 297.
Recorded March 13th, 1871, at 9 o'clock p. m.

WM. SPRUANCE,
Recorder.

12. 290. Mch. 13, 1871.

Isaacs, John M.
Bellamy, Charles T.
Early, Thos. B.
Drips, James W.
M'Coy, John C.
Napheys, Benj. F.
Randall, Jessee S.

} Quitclaim deed, Mch. 13, 1871, conveys all grantor's interest in 1,400 feet to Marshall Silver Mining Co.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

307 We do hereby certify that the foregoing abstract is taken from the records of said county, and that the title to said Number 5 Lode, as therein set forth, is correctly taken from said records.

Witness our names and seal this 12th day of December, A. D. 1872, at 9 o'clock a. m.

[SEAL.] (S'g'd) SAYER & PARMELEE.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

I, William Spruance, clerk & recorder of said county, do hereby certify that the foregoing abstract is taken from the records of this office and that the title to said Number 5 Lode, as therein set forth, is correctly taken from said records, and that the annexed is a true copy of the pre-emption of said lode.

Given under my hand and seal of said county this 12th day of December, A. D. 1872, at 9 o'c. a. m.

[SEAL.] WM. SPRUANCE,
Clerk & Recorder.

(Endorsed:) No. 18872. Abstract of title to Tunnel Number 5 Lode. U. S. land office, Central City, Colorado, Dec. 14, 1872. Approved. Samuel P. Lathorp, register, Wm. A. Arnold, receiver.

308 Abstract of title to the Number 5 Lode in Griffith district, Clear Creek County, Colorado Territory. Number 5 Lode. Griffith dist. Location certificate.

TERRITORY OF COLORADO,
Clear Creek County, ss:

Know all men by these presents, that we, the undersigned, claim by right of location fourteen hundred feet linear and horizontal measurement on the Number 5 Lode, along the vein thereof, with all its dips, variations, and angles, together with the amount of surface necessary for working the same and allowed by law; seven hundred feet of said lode so located lying and being easterly of the discovery on said lode, and seven hundred feet being westerly of said shaft.

Discovery shaft of said lode being situated in the Marshall Silver Min-

ing Company's Tunnel on east side of Leavenworth Mountain, thirty-nine feet from centre of drift, on Lode No. 4 north, 43 west—(revenue stamp, 35c., cancelled)—in Griffith mining district.

Dated March 13, 1871.

JOHN M. NADES.
CHARLES T. BELLAMY.
THOS. B. EARLY.
JAMES W. DRIPS.
JOHN C. McCOY.
BENJ. F. NAPHEYS.
309 JESSEE S. RANDALL.

Recorded March 13th, 1871, at 9 o'clock p. m. Wm. Spruance, recorder.

12. 290. Mch. 13, 1871.

Isaacs, John M.
Bellamy, Charles T.
Early, Thos. B.
Drips, James W.
McCoy, John C.
Napheys, Benj. F.
Randall, Jessee S.

} Quit claim deed, Mch. 13, 1871, conveys all interest in 1,400 feet to Marshall Silver Mining Company.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

We do hereby certify that the foregoing abstract is taken from the records of said county, and that the title to said Lode No. 5, as therein set forth, is correctly taken from said records.

Witness our name and seal this 14th day of Feb'y, A. D. 1873, at 4¼ 4½ o'clock p. m.

[SEAL.] SAYER & PARMELEE.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

I, William Spruance, clerk & recorder of said county, do hereby certify that the foregoing abstract is taken from the records of this office,
309*a* and that the title said Lode No. 5 as therein set forth is correctly taken from said records, and that the annexed is a true copy of pre-emption of said lode.

Given under my hand and seal of said county this 14th day of February, A. D. 1873, at 4½ o'clock p. m.

[SEAL.] WM. SPRUANCE,
Clerk & Recorder,
Per H. A. SPRUANCE,
Deputy.

(Endorsed:) No. 2773. Abstract of title to Tunnel No. 5 Lode. Filed in the U. S. land office, at Central City, Colorado, Feb. 15, 1873. Samuel P. Lothrop, register.

I, the undersigned, publisher and proprietor of the Colorado Miner, a weekly newspaper published at Georgetown, Clear Creek County, Territory of Colorado, hereby agree to publish a notice dated U. S. land office, Central City, Colorado, Dec. 14th, 1872, required by act of Congress approved May 10, 1872, of the intention of the Marshal Silver Mining Company to apply for patent for their claim on the Tunnel Lode No. 5, situated in Griffith mining district, county of Clear Creek, Territory aforesaid, and to hold the said Marshal Silver M'g Co., of Georgetown, alone responsible for the amount of my bill for publishing the same; and it is hereby expressly stipulated and agreed that no claim shall be made against
309*b* the Government of the United States, or its officers or agents, for such publication.

Witness my hand this 14 day of Dec., A. D. 187 .

ALEX. CREE.

Witness:

BEN. F. NAPHEYS.

Tunnel Lode No. 5, Marshal Sil. M'g Co. Agreement of publishers. U. S. land office, Central City, Colorado. Dec. 16, 1872. Appe'd, Samuel P. Lothrop, register; W. A. Arnold, receiver.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

Francis J. Marshall, of the above-named county, being first duly sworn, deposes and says that he is a citizen of the United States, over the age of twenty-one years; that he is the president and duly authorized agent of the Marshall Silver Mining Company of Georgetown, which co. has made application for patent for their mining claim, consisting of 950 linear feet of Tunnel Lode No 5, situated in Griffith mining district, Clear Creek County, Colorado Territory.

Affiant further deposes and says that in prosecuting the said application he has paid for the said co. sums as follows, to wit: For the survey, to W. H. Lessig, surv. gen'l, sixteen (16) dollars, and to F. F. Brune,
309*c* deputy, seventy-five dollars; for publication of notice, to Alex. Cree, proprietor of the Colorado Miner, seventy-four dollars, and to register & receiver of the U. S. land office at Central City, Colorado, for filing said application ten (10) dollars.

(S'g'd) FRANCIS J. MARSHALL,
President of the Marshal Silver Mining Company of Georgetown.

Subscribed and sworn to before me this 14th day of February, 1873.

[SEAL.] CHARLES R. FISH,
Notary Public.

(Endorsed:) Tunnel Lode No. 5, Marshall Sil. M'g Co. Affidavit of sums paid for survey, &c. U. S. land office, Centr' City, Colorado. Approved Feb'y 15, 1873. Samuel P. Lathrop, register; Wm. A. Arnold, receiver.

U. S. LAND OFFICE,
Central City, Colorado, Mar. 10, 1873.

I hereby certify that a plat of and application for the mining claim of the Marshal Silver M'g Co. of Georgetown, consisting of 950 linear feet

of the Tunnel Lode No. 5, situated in Griffith m'g district, Clear Creek County, Colorado Territory, was filed in this office on the 14th day
309*d* of Dec., 1872.

I further certify that the published notice of the intention of the said co. to apply for patent for the said claim was posted in my office on the 14th day of Dec., 1872, and remained there posted the full period of sixty (60) days. I further certify that a copy of the plat and notice posted on said claim was also posted in my office on the 14th day of Dec., 1872, and remained there posted until the 27th day of Feb., 1873.

SAMUEL P. LOTHROP,
Register.

(Endorsed:) Tunnel Lode No. 5. Marshall Sil. M'g Co. Register's certificate of posting published notice & plat & notice in his office.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

F. J. Marshall and Thos. R. Owen, jr., of the above-named county, being first duly sworn, deposes and says that he is a citizen of the United States, over the age of twenty-one years, and that he is familiar with the mining claim consisting of nine hundred fifty (950) feet of Tunnel Lode No. 5, situate in Griffith mining district, Clear Creek County, Colorado Territory, and for which the Marshall Silver Mining Company of Georgetown have made application for patent.

Affiant further deposes and says that the plat representing said
309*e* claim, together with notice of application for patent posted on said claim on the 14th day of December, 1872, remained posted as on that day until the 13th day of Feb., 1873.

(S'g'd) F. J. MARSHALL.
THOS. R. OWEN, JR.

Subscribed and sworn to before me this 14' day of Feb., 1873.
[SEAL.] CHAS. R. FISH,
Notary Public.

(Endorsed:) Tunnel Lode No. 5, Marshall Sil. M'g Co. Proof that plat and notice was posted on claim during the 60 days of publication. U. S. land office, Central City, Colorado. Approved Feb'y 15, 1873. Samuel P. Lothrop, register; Wm. A. Arnold, receiver.

Land office notice.

U. S. LAND OFFICE,
Central City, Colorado, Dec. 14, 1872.

Notice is hereby given that the Marshall Silver Mining Company of Georgetown claim by discovery and location nine hundred and fifty (950) linear feet of the Tunnel Lode No. 5, with fifty feet in width of surface ground, it being a silver-bearing vein of rock, in place, and situated on unsurveyed lands in Griffith mining district, County of Clear
310 Creek and Territory of Colorado, being more fully described as follows, to wit: Beginning at the SW. corner of Sect. 19, Tp. 4 S., R. 74 W., (va., 15° 30′ *min.* east); thence N. 79° 35′ *min.* E. 49.87

feet established corner No. 1, being a post in mound of stones marked No. 1 and 247, from which a peak of Independent Mountain bears S. 59° E.; thence N. 50° E. 700 feet to post No. 2; thence N. 35° E. 250 feet to post No. 3; thence N. 40° W. 50 feet to post No. 4; thence S. 35° W. 250 feet to post No. 5; thence S. 50° W. 700 feet to post No. 6; thence S. 40° E. 50 feet to the place of beginning; contains $0\frac{45}{100}$ acres of ground. The discovery is found 769 feet from the mouth of the Marshall Tunnel, in said tunnel, 250 feet being east and 700 feet being west of the line of said tunnel property, located on Leavenworth Mountain. Adjoining claimants on the east, David E. Dulaney, L. D. C. Gaskill, et al., recorded in the records of Clear Creek County, Colorado Territory, book 2, page 297. Claimants on west unknown. They have this day filed in this office a plat and field-notes of survey of the same, together with a notice of intention to apply for a patent therefor, as provided in an act of Congress approved May 10th, 1872.

SAMUEL P. LOTHROP,
Register.

D–81–60d.

TERRITORY OF COLORADO,
Clear Creek County, ss:

311 I, Jesse S. Randall, of said county of Clear Creek, do hereby certify that I am foreman of the Colorado Miner, a daily newspaper published in Georgetown in said county and Territory, and I further certify that the notice of which the annexed is a true copy has been published in said newspaper for sixty successive days, and 51 times, and that the first publication of said notice was in said paper bearing date the 14' day of December, A. D. 1872, and the last publication of said notice was in said paper bearing date the 14' day of February, A. D. 1873.

Alex. Cree, publisher and proprietor, being absent from the county, & I, as foreman, being authorized to act for him in his absence. In witness thereof I have hereunto set my hand this 14th day of February, A. D. 1873.

JESSE S. RANDALL,
Foreman of office.

Subscribed and sworn to before me this fourteenth day of February, A. D. 1873.

[SEAL.] CHARLES R. FISH,
Notary Public.

GEORGETOWN, COL., *Feb.* 12, 1873.

Marshall Sil. M. Co. to Alexander Cree, Dr., publisher and proprietor of The Colorado Miner.

To publishing Tunnel Lode, No. 5 60 days, $24.00.
Rec'd p't.
[SEAL.] ALEX. CREE,
Per RANDALL.

312 (Endorsed:) Tunnel Lode No. 5. Marshall Silver Min'g Co. of Georgetown. Proof of publication. U. S. land office, Central City, Colorado. Approved Feb'y 15, 1873. Samuel P. Lothrop, register. Wm. A. Arnold.

To whom these presents may come:

Know ye that we, the undersigned, all residents of Georgetown, in the county of Clear Creek and Territory of Colorado, do hereby, in conformity with the provisions of the eighteenth chapter of the revised statutes of Colorado Territory, entitled corporations, associate ourselves together for the purposes hereinafter mentioned, and under our hands and seals make this our certificate in writing, and do certify as follows, to wit:

First. Designing to excavate a tunnel for the purposes of mining and prospecting for gold, silver, and other ores, the beginning, course, and termination of which is hereinafter set forth and described, designing to mine for gold, silver, and other ores on lodes discovered upon the surface, the location of which is hereinafter set forth and described, and further designing to erect a suitable mill for reducing and treating every character of ore, the location of which is hereinafter set forth and described, we have associated ourselves together that we may become a body politic and corporate under the name and style of the Marshall Silver Min-
313 ing Company of Georgetown.

Second. Said tunnel shall commence at a point near the base of Leavenworth Mountain, marked with a stake, within one hundred feet of Leavenworth's Creek, and within twenty feet of the discovery shaft on the William B. Astor Lode; thence running north 43 west nineteen hundred and twenty-two feet; thence north 22½ west nineteen hundred and ninety feet, passing through Leavenworth Mountain to the north side and terminating at a point on the north side of said mountain three thousand nine hundred and twelve feet, distant on the course of the tunnel from the point of beginning; said mountain through which said tunnel shall pass being situated in Argentine and Griffith mining district, in Clear Creek County, Colorado Territory; and said tunnel shall be excavated for the purpose of prospecting for lodes of gold and silver ores and other metals, and excavating the same for said lodes, *said lodes*, which said corporation design mining from the surface for the purpose of excavating gold, silver, and other ores therefrom, and located on Leavenworth Mountain immediately crossing the line of said tunnel in Argentine and Griffith mining district, in Clear Creek County, Colorado Territory; and said mill said corporation design erecting for the purpose of reducing ores of every kind and character shall be located at a point on Leavenworth Creek near the beginning of said tunnel.

314 Third. The capital stock of said Marshall Silver Mining Company of Georgetown shall be one hundred and fifty thousand dollars, which shall be divided into fifteen hundred equal shares, one hundred dollars each.

Fourth. Said corporation shall exist and remain in being for the term of twenty years, from and after the date of the filing of the certificate made by said corporation under and by virtue of the provisions of the statute aforesaid.

Fifth. Five trustees shall manage the business and concerns of said corporation, and the names of said trustees who shall act for the first year are as follows, to wit: Francis J. Marshall, George B. Walker, John T. Herrick, Charles Patterson, and Charles W. Dennison.

Sixth. Said corporation shall have as officers a president, who shall be chosen from those named as trustees; the secretary & treasurer, what shall be chosen from the stockholders in such way and manner as the corporation by its by-laws may direct.

Seventh. It shall and may be lawful for the trustees of said corporation to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business of said corporation not inconsistent with the Constitution of the United States or of the
315 laws of the Territory and prescribing the duties of officers, artificers, and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within objects and purposes of said corporation.

Eighth. Said corporation shall operate on Leavenworth Mountain, within the tunnel above described, upon the lodes described as being located on said mountain, and further operate said mill in the reduction of ores at the point above described as its location; and said corporation shall have an office for the meetings of its officers and the transactions of its business in Georgetown, Clear Creek County, Colorado Territory.

In witness whereof we have hereunto set our hands and seals, this 22d day of September, A. D. 1868.

FRANCIS J. MARSHALL. [SEAL.]
GEORGE B. WALKER. [SEAL.]
JOHN T. MERRICK. [SEAL.]
CHAS. B. PATTERSON. [SEAL.]
CHAS. W. DENISON. [SEAL.]

TERRITORY OF COLORADO,
Clear Creek County, ss:

On this 22d day of September, A. D. 1868, before me, a notary public in and for the county and Territory aforesaid, appeared Francis J. Marshall, George B. Walker, John T. Herrick, Chas. B. Patterson, and Chas. W. Denison, personally known to me to be the same persons who exe-
316 cuted the foregoing instrument, and acknowledged it to be their own free act and deed, and for the uses and purposes therein mentioned.

Witness my hand and notarial seal.

[SEAL.] HENRY C. HARRINGTON,
Notary Public.

Recorded October 14, A. D. 1868, at 4 o'clock p. m.
WILLIAM SPRUANCE,
Recorder.

TERRITORY OF COLORADO,
Clear Creek County, ss:

I, William Spruance, county clerk and ex-officio recorder of deeds within and for said county and Territory aforesaid, do hereby certify that the above and foregoing articles of incorporation of the Marshall Silver Mining Company is a full, true, and correct copy of the original as the same appears of record in my said office, and recorded book Z, page 315, of the records aforesaid.

Witness my hand and official seal.

WM. SPRUANCE,
Co. Cl'k and Ex-officio Recorder,
Per H. A. SPRUANCE,
Deputy.

(Endorsed:) Certified copy incorporation articles Marshall Silver Mining Company. U. S. land office, Central City, Colorado. Appr'ved Dec. 14, 1872, Samuel P. Lothrop, register; Wm. A. Arnold, receiver.

317 No. 247. Transcript of amended field-notes of survey of the Marshall Silver Mining Co. claim upon the Tunnel Lode in No. 5, Griffith mining district, Clear Creek County, C. T. Surveyed by Francis F. Brune, U. S. deputy surveyor.

Feet. Beginning at the SW. cor. Sec. 19, T. 4 S., R. 74 W., va. 15° 30′ E.; thence N. 79° 35′ E.

4,987. Established cor. No. 1, being a post in mound of stones marked No. 1 & 247, from which peak of Independent Mt. bears S. 59° E.; thence N. 50° E.

700. Set a post in mound of stones marked No. 2 & 247, from which the mouth of Marshall Tunnel bears S. 44° E. 744 ft. dist.; thence N. 35° E.

250. Set a post in mound of stones marked No. 3 & 247; thence N. 40° W.

50. Set a post in mound of stones marked No. 4 & 247; thence S. 35° W.

250. Set a post in mound of stones marked 5 & 247; thence S. 50° W.

700. Set a post in mound of stones marked No. 6 & 247; thence S. 40° E.

318 50. To place of beginning, containing 1.09 acres and located in SE. ¼ Sec. 19, Tp. 4 S., R. 74 W., & SW. ¼ Sec. 20, T. 4 S., R. 74 W.

General description.

It is a silver-bearing vein, discovered 769 feet from the mouth of the Marshall Tunnel, in said tunnel. Its improvements upon the surface ground of this claim consist in a shaft 60 ft. deep and 100 ft. westerly from the intersection of the lode at the distance of 250 ft., and at the distence of 365 ft. from the intersection of said lode with the Marshall Tunnel two cross-cut tunnels, 75 ft. in length, have been run toward the vein. The value of labor and improvements upon the said mining claim is not less than five hundred dollars ($500).

A list of the names of the individuals employed to assist in running, measuring, or making the lines and corners described in the foregoing field-notes of the Marshall Silver Mining Co. claim upon the Tunnel Lode No. 5: Francis J. Marshall, William J. Peeples, William T. Hickok.

We do hereby certify that we assisted Francis J. Brune, deputy surveyor, in surveying Marshall Silver Mining Co. mining claim upon the Tunnel Lode No. 5, and that said lode has been in all respects, to
319 the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments planted according to instructions furnished by the surveyor-general.

FRANCIS J. MARSHALL.
WILLIAM J. PEEPLES.
WILLIAM T. HICKOK.

Subscribed by the above-named persons and sworn to before me this 10th day of December.

HENRY C. HARRINGTON,
Notary Public.

I, Francis F. Brune, deputy surveyor, do solemnly swear that, in pursuance of an order from William H. Lessig, surveyor of the public lands of the United States in the Territory of Colorado, bearing date 6th day of December, 1872, and in strict conformity to the laws of the United States in the instructions furnished by said surveyor-general, I have faithfully surveyed the Marshall Silver Mining Co. claim upon the Tunnel lode No. 5, and do further solemnly swear that the foregoing are the true field-notes of such survey.

FRANCIS F. BRUNE,
Deputy Surveyor.

Subscribed by the said Francis F. Brune, deputy surveyor, and sworn to before me this 19th day of May, A. D. 1873.

JNO. A. COULTER,
Notary Public.

320 I certify that the foregoing transcript of the field-notes of the survey of the Marshall Silver Mining Co. mining claim, situated in Griffith mining district, county of Clear Creek, and Territory of Colorado, has been correctly copied from the original notes of said survey, on file in this office; that said field-notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects and permanent monuments as will perpetuate and fix the locus thereof. I further certify that the value of the labor and improvements upon the said mining claim is not less than five hundred dollars, and that the plat thereof filed in the U. S. land office at Central City is correct and in conformity with the foregoing field-notes.

W. H. LESSIG,
U. S. Surveyor General of Colorado.

U. S. SURVEYOR GENERAL'S OFFICE,
Denver, Colorado, May 20th, 1873.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

Francis J. Marshall, of the above-named county and Territory, being first duly sworn according to law, on oath deposes and says that he is a citizen of the United States and over the age of twenty-one years;
321 that he, affiant, is the president of the Marshall Silver Mining Company, of Georgetown, Colorado Territory; that said company are applicants for patent to their claim of nine hundred and fifty ft. in length by fifty ft. in width of the Tunnel Lode No. 5, on Leavenworth Mountain, in Griffith mining district, Clear Creek County, Colorado Territory. Affiant further deposes and says that the aforesaid company have the possessory right to the premises embraced within the said company's application for patent as set forth in the plat of the survey of said premises made by direction of the surveyor-general of the Territory of Colorado, by virtue of discovery of said lode, on the line of the Marshall Tunnel discovery in said tunnel, and by virtue of compliance by said company with the mining rules, regulations, and customs of Griffith mining district, the laws of the Territory of Colorado, and the several acts

317 No. 247. Transcript of amended field-notes of survey of the Marshall Silver Mining Co. claim upon the Tunnel Lode in No. 5, Griffith mining district, Clear Creek County, C. T. Surveyed by Francis F. Brune, U. S. deputy surveyor.

Feet. Beginning at the SW. cor. Sec. 19, T. 4 S., R. 74 W., va. 15° 30′ E.; thence N. 79° 35′ E.

4,987. Established cor. No. 1, being a post in mound of stones marked No. 1 & 247, from which peak of Independent Mt. bears S. 59° E.; thence N. 50° E.

700. Set a post in mound of stones marked No. 2 & 247, from which the mouth of Marshall Tunnel bears S. 44° E. 744 ft. dist.; thence N. 35° E.

250. Set a post in mound of stones marked No. 3 & 247; thence N. 40° W.

50. Set a post in mound of stones marked No. 4 & 247; thence S. 35° W.

250. Set a post in mound of stones marked 5 & 247; thence S. 50° W.

700. Set a post in mound of stones marked No. 6 & 247; thence S. 40° E.

318 50. To place of beginning, containing 1.09 acres and located in SE. ¼ Sec. 19, Tp. 4 S., R. 74 W., & SW. ¼ Sec. 20, T. 4 S., R. 74 W.

General description.

It is a silver-bearing vein, discovered 769 feet from the mouth of the Marshall Tunnel, in said tunnel. Its improvements upon the surface ground of this claim consist in a shaft 60 ft. deep and 100 ft. westerly from the intersection of the lode at the distance of 250 ft., and at the distence of 365 ft. from the intersection of said lode with the Marshall Tunnel two cross-cut tunnels, 75 ft. in length, have been run toward the vein. The value of labor and improvements upon the said mining claim is not less than five hundred dollars ($500).

A list of the names of the individuals employed to assist in running, measuring, or making the lines and corners described in the foregoing field-notes of the Marshall Silver Mining Co. claim upon the Tunnel Lode No. 5: Francis J. Marshall, William J. Peeples, William T. Hickok.

We do hereby certify that we assisted Francis J. Brune, deputy surveyor, in surveying Marshall Silver Mining Co. mining claim upon the Tunnel Lode No. 5, and that said lode has been in all respects, to
319 the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments planted according to instructions furnished by the surveyor-general.

FRANCIS J. MARSHALL.
WILLIAM J. PEEPLES.
WILLIAM T. HICKOK.

Subscribed by the above-named persons and sworn to before me this 10th day of December.

HENRY C. HARRINGTON,
Notary Public.

I, Francis F. Brune, deputy surveyor, do solemnly swear that, in pursuance of an order from William H. Lessig, surveyor of the public lands of the United States in the Territory of Colorado, bearing date 6th day of December, 1872, and in strict conformity to the laws of the United States in the instructions furnished by said surveyor-general, I have faithfully surveyed the Marshall Silver Mining Co. claim upon the Tunnel lode No. 5, and do further solemnly swear that the foregoing are the true field-notes of such survey.

FRANCIS F. BRUNE,
Deputy Surveyor.

Subscribed by the said Francis F. Brune, deputy surveyor, and sworn to before me this 19th day of May, A. D. 1873.

JNO. A. COULTER,
Notary Public.

320 I certify that the foregoing transcript of the field-notes of the survey of the Marshall Silver Mining Co. mining claim, situated in Griffith mining district, county of Clear Creek, and Territory of Colorado, has been correctly copied from the original notes of said survey, on file in this office; that said field-notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects and permanent monuments as will perpetuate and fix the locus thereof. I further certify that the value of the labor and improvements upon the said mining claim is not less than five hundred dollars, and that the plat thereof filed in the U. S. land office at Central City is correct and in conformity with the foregoing field-notes.

W. H. LESSIG,
U. S. Surveyor General of Colorado.

U. S. SURVEYOR GENERAL'S OFFICE,
Denver, Colorado, May 20th, 1873.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

Francis J. Marshall, of the above-named county and Territory, being first duly sworn according to law, on oath deposes and says that he is a citizen of the United States and over the age of twenty-one years;
321 that he, affiant, is the president of the Marshall Silver Mining Company, of Georgetown, Colorado Territory; that said company are applicants for patent to their claim of nine hundred and fifty ft. in length by fifty ft. in width of the Tunnel Lode No. 5, on Leavenworth Mountain, in Griffith mining district, Clear Creek County, Colorado Territory. Affiant further deposes and says that the aforesaid company have the possessory right to the premises embraced within the said company's application for patent as set forth in the plat of the survey of said premises made by direction of the surveyor-general of the Territory of Colorado, by virtue of discovery of said lode, on the line of the Marshall Tunnel discovery in said tunnel, and by virtue of compliance by said company with the mining rules, regulations, and customs of Griffith mining district, the laws of the Territory of Colorado, and the several acts

of Congress pertaining to mineral lands, and that the developments and improvements on the aforesaid claim amount in value to a sum exceeding five hundred dollars.

FRANCIS J. MARSHALL.

Sworn and subscribed to before me this 12th day of December, A. D. 1872.

HENRY C. HARRINGTON,
Notary Public.

322 *Proof of value of improvements.*

Samuel P. Bruce, being first duly sworn, deposes and says that he is a citizen of the United States, over the age of twenty-one years; that he is acquainted with the mining claim, consisting of 950 feet, upon the Marshall Tunnel Lode, Number Five Lode, situate in Griffith mining district, Clear Creek County, and Territory of Colorado, for which the Marshall Silver Mining Company of Georgetown has made application for patent under the provisions of the act of Congress approved May 10, 1872; that the improvements made thereon by said applicant and his grantors are worth not less than five hundred dollars, and that he (the said affiant) owns no interest whatever in said property.

S. P. BRUCE.

Subscribed ands worn to before me this 17th day of December, 1873; and I hereby certify that I consider this affiant a credible and reliable witness.

[SEAL.] CHARLES R. FISH,
Notary Public.

(Endorsed:) Tunnel Lode No. 5. S. P. Bruce, affidavit.

323 *Proof of value of improvements.*

Zachary T. Reynolds, being first duly sworn, deposes and says that he is a citizen of the United States, over the age of twenty-one years; that he is acquainted with the mining claim, consisting of 950 feet, upon the Marshall Tunnel Lode, Number Five Lode, situate in Griffith mining district, Clear Creek County, and Territory of Colorado, for which the Marshall Silver Mining Company of Georgetown has made application for patent under the provisions of the act of Congress approved May 10, 1872; that the improvement made thereon by said applicant and his grantors are worth not less than five hundred dollars, and that he (the said affiant) owns no interest whatever in said property.

Z. T. REYNOLDS.

Subscribed and sworn to before me this 16th day of December, 1873; and I hereby certify that I consider this affiant a credible and reliable witness.

[SEAL.] CHARLES R. FISH,
Notary Public.

(Endorsed:) Tunnel Lode No. 5. Affidavit of Zachary T. Reynolds.

Proof of value of improvements.

Francis J. Marshall, president of the Marshall Silver Mining
324 Company, being first duly sworn, deposes and says that he is a citizen of the United States, over the age of twenty-one years; that he is acquainted with the mining claim, consisting of 950 feet, upon the Marshall Tunnel Lode No. Five, situate in Griffith mining district, Clear Creek County, and Territory of Colorado, for which the Marshall Silver Mining Company has made applications for patent under the provisions of the act of Congress approved May 10, 1872; that the improvements made thereon by said applicant and his grantors are worth not less than five hundred dollars.

F. J. MARSHALL,
President of Georgetown Marshall Silver Mining Company.

Subscribed and sworn to before me this 16th day of December, A. D. 1873; and I hereby certify that I consider this affiant a credible and reliable witness.

[SEAL.] CHARLES R. FISH,
Notary Public.

(Endorsed:) Marshall Tunnel Lode No. 5. Marshall S. Mg. Co. Affidavit F. J. Marshall. Proof of value of improvements. U. S. Land Office, Central City, Colorado, Dec. 18, 1873. Jas. Marshall, register.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

325 Francis J. Marshall, of the above-named county and Territory, being first duly sworn according to law, deposes and says that he is over the age of twenty-one years; that he is the same person who make' application for U. S. patent for the Marshall Silver Mining Company of Georgetown, Colorado, for the claim of 950 feet in length and 50 ft. in width of surface ground of Tunnel Lode No. 5 discovered in the Marshall Tunnel and situate in Griffith mining district, Clear Creek County, Colorado, under the provisions of the mining act of Congress approved May 10th, 1872.

This affiant further deposes and says that he is a native-born citizen of the United States, born in the county of Lee, State of Virginia.

FRANCIS J. MARSHALL.

Subscribed and sworn to before me this 12th day of December, A. D. 1872.

[SEAL.] HENRY C. HARRINGTON,
Notary Public.

(Endorsed:) Tunnel Lode No. 5, Marshall Silver Mining Co. Proof of the citizenship of Francis J. Marshall. U. S. Land Office, Central City, Colorado. Approved Dec. 14, 1872. Samuel P. Lothrop, register; Wm. A. Arnold, receiver.

326 (Form 3.) Duplicate receiver's receipt. (Duplicate to be given the purchaser.) Mineral entry No. 358. Lot No. 247.

U. S. LAND OFFICE AT CENTRAL CITY, COLORADO,
June 2nd, 1873.

Received from the Marshall Silver Mining Company of Georgetown at the hands of F. J. Marshall, its president, the sum of ten ($10) dollars, the same being in full for the surface area embraced by survey No. 247, in the SE. ¼ Sec. 19 & SW. ¼ of Section 20, in Township No. 4 south, of Range No. 74 west of 6th principal meridian, said mineral claim or lot of land being situate in Griffith mining district, county of Clear Creek, and Territory of Colorado, and known as the Tunnel Lode No. 5 mining claim, embracing 1.09 acres, as shown by said survey.

$10. WM. A. ARNOLD, *Receiver.*

(Endorsed:) Duplicate receiver's receipt, case of the Tunnel Lode No. 5 mining claim, lot No. 247, in T. 4 S., R. 74 west, in Griffith mining district, Clear Creek County, Colorado, claimed by the Marshall Silver Min'g Co. of Georgetown. Mineral patent No. 922 delivered to Wm. A. Arnold July 4, 1874. Jas. M. Marshall, register.

(Form 3.) Receiver's receipt. (Duplicate to be given the purchaser.) Mineral entry No. 358. Lot No. 247.

327 U. S. LAND OFFICE AT CENTRAL CITY, COLORADO,
June 2nd, 1873.

Received from the Marshall Silver Mining Company of Georgetown, at the hands of F. J. Marshall, its president, the sum of ten ($10) dollars, the same being in full for the surface area embraced by survey No. 247 in the SE. ¼ Sect. 19 & SW. ¼ of Section 20, in Township No. 4 south, of Range No. 74 west of 6th principal meridian, said mineral claim or lot of land being situate in Griffith mining district, County of Clear Creek, and Territory of Colorado, and known as the Tunnel Lode No. 5 mining claim, embracing 1.09 acres, as shown by said survey.

$10. WM. A. ARNOLD, *Receiver.*

(Endorsed:) Receiver's receipt. Case of the Tunnel Lode No. 5 mining claim, lot No. 247, in T. 4 S., R. 74 west, in Griffith mining district, Clear Creek County, Colorado, claimed by the Marshall Silver Min'g Co. of Georgetown.

(Form 4.) Register's final certificate of entry. Mineral entry No. 358. Lot No. 247.

U. S. LAND OFFICE AT CENTRAL CITY, COLORADO,
June 2d, 1873.

328 It is hereby certified that, in pursuance of the mining act of Congress approved July 26, 1866, and the act amendatory thereof, approved July 9, 1870, & act of May 10, 1872—

The Marshall Silver Mining Company of Georgetown, whose post-office address is on this day , purchased that mineral claim on lot of land designated as survey No. 247, in the SE. ¼ Section 19 &

SW. ¼ of Section 20, in Township No. 4 S., of Range 74 west of 6th principal meridian, situate, lying, and being in the Griffith mining district, in the county of Clear Creek, and Territory of Colorado, known as the Tunnel Lode No. 5 mining claim, embracing nine hundred & fifty (950) linear feet of the Tunnel Lode No. 5, with 1.09 acres of surface ground, as shown by said survey, for which the said Marshall Silver M'g Co. have this day made payment to the receiver in full, amounting to the sum of ten (10) dollars.

Now, therefore, be it known that upon the presentation of this certificate to the Commissioner of the General Land Office, together with the plat, survey, and description of said claim, a patent shall issue thereupon to the said Marshall Silver M'g Co. if all be found regular.

SAMUEL P. LATHROP,
Register.

(Endorsed:) Register's final certificate of entry. Case of the Tunnel Lode No. 5 mining claim, of 950 linear feet, upon the Tunnel
329 Lode No. 5, being lot No. 247, in T. 4 S., of R. 74 W., Griffith mining district, Clear Creek County, Colorado Territory, claimed by Marshall Sil. Mg. Co.

(Form 2.) Application to purchase. To the register and receiver U. S. land office, at Central City, Colorado, June 2d, 1873. Mineral entry No. 358. Lot No. 247.

The undersigned, applicants under the laws of Congress for a patent for what is known as the Tunnel Lode No. 5 mining claim, embracing nine hundred & fifty (950) linear feet of the Tunnel Lode No. 5, vein or lode, with 1.09 acres of surface ground, the same being designated by the surveyor-general as lot No. 247, in the SE. ¼, Sect. 19 & SW. ¼ of Section 20, in Township 4 S., of Range 74 west of the 6th principal meridian, in the Griffith mining district, Clear Creek County, Territory of Colorado, do hereby apply to purchase said mineral claim or lot of land, and agree with the register to pay ten (10) dollars, being the legal price thereof.

MARSHALL SILVER MINING COMPANY
OF GEORGETOWN,
By F. J. MARSHALL, *Presid.*

I, Samuel P. Lathrop, register of the land office at Central City, Colorado, do hereby certify that the aforesaid mineral claim or lot No.
330 247 is subject to entry by the above-named applicants, the area being 1.09 acres, and the legal price thereof ten (10) dollars.

SAMUEL P. LATHROP,
Register.

(Endorsed:) Application to purchase. Case of the Tunnel Lode No. 5 mining claim, lot No. 247, in T. 4 S., R. 74 W., in Griffith mining district, Clear Creek County, Colorado, territory claimed by Marshall Sil. M'g Co.

Proof of posting plat and notice.

Thomas R. Owen, jr., and Samuel P. Bruce, each for himself and not one for the other, being first duly sworn according to law deposes and

says that he is a citizen of the United States over the age of twenty-one years, and was present on the 12th day of December, 1872, when a plat representing the Marshall Silver Mining Company's claim upon the Tunnel Lode No. 5, situate in Griffith mining district, Clear Creek County, and Territory of Colorado, together with notice of said Marshall Silver Mining Company's intention to apply for a survey and patent therefor, was posted in a conspicuous place on said mining claim, to wit, upon a board planted vertically on the surface ground over the discovery of said lode as found in the Marshall Tunnel, where it could be easily seen and examined, and a true, full, and correct copy of said plat and notice
331 is hereto attached and made a part of this affidavit.

THOMAS R. OWEN, JR.
SAMUEL P. BRUCE.

Subscribed and sworn to before me this 12th day of September, A. D. 1872; and I hereby certify that I consider the above deponents credible and reliable witnesses, and that the foregoing affidavit, to which a full, true, and correct copy of the plat and notice referred to were attached at the time, was read and examined by each of them before their signatures were affixed thereto, and the oaths made by them.

HENRY C. HARRINGTON,
Notary Public.

(Here follows diagram marked p. 332.)

333 EXHIBIT D.—*John W. Webster, Examiner.*

DEPARTMENT OF THE INTERIOR, H. F. C.
GENERAL LAND OFFICE,
Washington, D. C., February 3, 1883.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of U. S. mineral patent No. 922, for the claim of the Marshall Silver Mining Company of Georgetown upon the Tunnel Lode No. 5, Central City, Colorado land district, is a true and literal exemplification from the records of this office.

334 In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

{ SEAL S. U. GEN. LAND OFFICE. }

N. C. McFARLAND,
Commissioner of General Land Office.

Land Office No. 922. Mineral certificate No. 358.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting:

Whereas in pursuance of the act of Congress approved July twenty-six, eighteen hundred and sixty-six, entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," the act amendatory thereof approved July ninth, eighteen hundred and seventy, and the act approved May tenth, eighteen hundred and

seventy-two, entitled "An act to promote the development of the mining resources of the United States," there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of the Marshall Silver Mining Company of Georgetown, upon the Tunnel Lode No. 5, accompanied by the certificate of the register of the land office at Central City, in the Territory of Colorado, whereby it appears that in pursuance of said acts of Congress the Marshall Silver
335 Mining Company of Georgetown did, on the second day of June, A. D. 1873, enter and pay for said mining claim or premises, being mineral entry No. 358, in the series of said office designated by the surveyor-general as lot No. 247, embracing a portion of the southeast quarter of section nineteen (19) and southwest quarter of section twenty (20) in township four (4) south of range seventy-four (74) west in the Griffith mining district, in the county of Clear Creek and Territory of Colorado, in the district of lands subject to sale at Central City, embracing one (1) acre and nine hundredths ($1\frac{9}{100}$) of an acre of land, more or less, and according to the returns on file in the General Land Office bounded, described, and platted as follows, with magnetic variation at fifteen (15) degrees thirty (30) minutes east, to wit:

Beginning at corner No. 1, post in mound of stones marked No. 1 and 247, from which the southwest corner of section nineteen (19) in township four (4) south of range seventy-four (74) west bears south seventy-nine (79) degrees thirty-five (35) minutes west at the distance of four thousand nine hundred and eighty-seven (4,987) feet, and peak of Independence Mountain bears south fifty-nine (59) degrees east; thence from said corner No. 1 north fifty (50) degrees east seven hundred (700) feet to corner No. 2, post in mound of stones marked No. 2 and 247, from which the mouth of Marshall Tunnel bears south forty-four (44) degrees east at the distance of seven hundred and forty-four (744) feet; thence from
336 said corner No. 2 north thirty-five (35) degrees east, thirty-three (33) feet to southerly boundary of survey No. 231, made for the claim of Erskine McClellan et. al. upon the Cayuga Lode, two hundred and fifty (250) feet to corner No. 3, post in mound of stones marked No. 3 and 247; thence north forty (40) degrees west twenty-five (25) feet to northerly boundary of said survey No. 231 fifty (50) feet to corner No. 4, post in mound of stones marked No. 4 and 247; thence south thirty-five (35) degrees west two hundred (200) feet to northerly boundary of said survey 231, two hundred and fifty (250) feet to corner No. 5, in post mound of stones marked No. 5 and 247; thence south fifty (50) degrees west five hundred and ninety (590) feet to northerly boundary of said survey No. 231, seven hundred (700) feet to corner No. 6, marked No. 6 and 247; thence south forty (40) degrees east fifty (50) feet to the place of beginning, containing one (1) acre and nine one-hundredths ($1\frac{9}{100}$) of an acre of land, more or less, embracing two hundred and fifty (250) feet northeasterly and seven hundred (700) feet southwesterly from discovery on said Tunnel Lode No. 5, as represented by yellow shading in the following plat.

(Here follows diagram marked p. 337.)

337(*a*) Now know ye, that the United States of America, in consideration of the premises, and in conformity with said acts of Congress,

have given and granted, and by these presents do give and grant, unto the said Marshall Silver Mining Company of Georgetown, and to
337(*b*) their successors and assigns, the said mining premises hereinbefore described as lot No. 247, embracing a portion of the southeast quarter of section nineteen (19), and southwest quarter of section twenty (20), in township four (4) south of range seventy-four (74) west, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, of nine hundred and fifty (950) linear feet of the said Tunnel Lode No. 5, vein, lode, ledge, or deposit for the length hereinbefore described throughout its entire depth, although it may enter the land adjoining, and also of all other veins, lodes, ledges or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior boundary lines of said survey, at the surface, extending downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: Provided, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said
338 veins, lodes, ledges, or deposits: And provided further, that nothing in this conveyance shall authorize the grantee herein, their successors or assigns, to enter upon the surface of a mining claim owned or possessed by another; to have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Marshall Silver Mining Company of Georgetown, and to their successors and assigns forever, subject, nevertheless, to the following conditions and stipulations:

First. That the grant hereby made is restricted to the land hereinbefore described as lot No. 247, with nine hundred and fifty (950) linear feet of the Tunnel Lode No. 5, vein, lode, ledge or deposit for the length aforesaid throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depth, as aforesaid, the tops or apexes of which lie inside of the exterior lines of said survey, but subject to the right of other parties to follow any vein or lode with its dips, angles, and variations legally held under a location made prior to May 10, 1872.

Second. That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside of the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for
339 the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit.

Third. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

Fourth. That in the absence of necessary legislation by Congress, the legislature of Colorado may provide rules for working the mining claim

or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the eighth day of June, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

By the President.

U. S. GRANT,

[SEAL.] By S. D. WILLIAMSON,
Secretary.

L. K. LIPPINCOTT,
Recorder of the General Land Office.

Recorded, Vol. 10, pages 433 to 438. Examined.

340 EXHIBIT No. 2.—*John W. Webster, Examiner.*

Seneca Lode. Argentine mining district.

TERRITORY OF COLORADO,
Clear Creek County, ss:

Know all men by these presents that we, the undersigned, claim by right of discovery two hundred feet, and by right of location twenty-eight hundred additional feet, linear and horizontal measurement, on the Seneca Lode, along the vein thereof, with all its dips, variations, and angles, together with the amount of surface necessary for working the same and allowed by law. Fifteen hundred feet of said lode so located lying and being northeast of the discovery shaft on said lode, and fifteen hundred feet being southwest of said shaft. Said lode being situated about forty rods north of the discovery claim on the Equator Lode in Argentine mining district. Dated Sept. 28th, 1867.

Attest:

A. G. THOMPSON.

WALTER N. WEBSTER.	DAVID CLARK.
JAMES W. AMES.	JOHN MCDONELL.
LEMUEL F. YATES.	WILLIAM P. IRWIN.
ELIAS R. EVANS.	CHARLES W. BRAMEL.
STEPHEN BAXTER.	ARNE LIMENS.
DE WITT M. WARREN.	WILLIAM CARROLL.
FRANK DE LAMAR.	DAVID W. HANNA.

[Rev. st., 70 cts.]

Recorded Sept. 28th, 1867, at 5 o'clock p. m.

WM. SPRUANCE,
Recorder.

By DRIPS,
Deputy Recorder.

Huneyoy Lode. Argentine mining district.

TERRITORY OF COLORADO,
County of Clear Creek ss:

341 Know all men by these presents that we, the undersigned, claim by right of discovery two hundred feet, and by right of location

twenty-eight hundred additional feet, linear and horizontal measurement, on the Hunuyoy Lode, along the vein thereof, with all its dips, variations, and angles, together with the amount of surface necessary for working the same and allowed by law. Fifteen hundred feet of said lode located lying and being northerly of the discovery shaft on said lode, and fifteen hundred feet being southerly of said shaft, said lode being situated about 40 rods (forty) to the north of the discovery claim on the Equator Lode in Argentine mining district. Dated September 28th, 1867.

Attest:

A. G. THOMPSON.

WALTER N. WEBSTER.	DAVID CLARK.
JAMES W. AMES.	JOHN MCDONELL.
LEMUEL F. YATES.	CHAS. W. BRAMEL.
ELIAS R. EVANS.	ARNE LIMENS.
STEPHEN BAXTER.	WILLIAM CARROLL.
DE WITT M. WARREN.	DAVID W. HANNA.
FRANK DE LAMAR.	WILLIAM P. IRWIN.

[Rev. st., 70 cts.]

Recorded Sept. 28th, 1867, at 5 o'clock p. m.

WM. SPRUANCE,
Recorder.

By DRIPS,
Deputy Recorder.

Canadice Lode. Argentine mining district.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

Know all men by these presents that we, the undersigned, claim by right of discovery two hundred feet, and by location twenty-eight
342 hundred additional feet, linear and horizontal measurement, on the Canadice Lode, along the vein thereof, with its dips and variations and angles, together with the amount of surface necessary for working the same and allowed by law. Fifteen hundred feet of said lode so located lying and being easterly of the discovery shaft on said lode and fifteen hundred feet being westerly of said shaft, said lode being situated about forty (40) rods northerly of the discovery shaft on the Equator Lode, Argentine mining district. Dated Sept. 28th, 1867.

Attest:

A. G. THOMPSON.

WALTER N. WEBSTER.	DAVID CLARK.
JAMES W. AMES.	JOHN MCDONELL.
LEMUEL F. YATES.	WILLIAM P. IRWIN.
ELIAS R. EVANS.	CHAS. W. BRAMEL.
STEPHEN BAXTER.	ARNE LIMENS.
DE WITT M. WARREN.	WILLIAM CARROLL.
FRANK DE LAMAR.	DAVID W. HANNA.

[Rev. st., 70 cts.]

Recorded Sept. 28th, 1867, at 5 o'clock p. m.

WM. SPRUANCE,
Recorder.

By DRIPS,
Deputy Recorder.

Cayugua Lode. Argentine mining district.

TERRITORY OF COLORADO,
County of Clear Creek, ss:

Know all men by these presents that we, the undersigned, claim by right of discovery two hundred feet, and by right of location twenty-eight hundred additional feet, linear and horizontal measurement, on the Cayuga Lode, along the vein thereof, with all its dips, variations, and angles, together with the amount of surface necessary for working the same
343 and allowed by law. Fifteen hundred feet of said lode so located lying and being northwest of the discovery shaft on said lode, and fifteen hundred feet being southeast of said shaft, said lode being situated about forty (40) rods north from the discovery shaft on the Equator Lode in Argentine mining district.

Dated September 28th, 1867.

Attest:

A. G. THOMPSON.

WALTER N. WEBSTER.	DAVID CLARK.
JAMES M. AMES.	JOHN MCDONELL.
LEMUEL F. YATES.	CHAS. W. BRAMEL.
ELIAS R. EVANS.	WILLIAM P. IRWIN.
STEPHEN BAXTER.	ARNE LIMENS.
DE WITT M. WARREN.	WILLIAM CARROLL.
FRANK DE LAMAR.	DAVID W. HANNA.

[Rev. st. 70 cts.]

Recorded Sept. 28th, 1867, at 5 o'clock p. m.

WILLIAM SPRUANCE,
Recorder.

By DRIPS,
Deputy Recorder.

STATE OF COLORADO,
Clear Creek County, ss:

I, F. L. Peck, clerk and recorder in and for said county, do hereby certify that the foregoing are true, correct, and complete copies of the location certificate of the Senaca, Huneyoy, Canadice, and Cayuga Lodes, as the same appear of record at pages 187 and 188 of book U, of the records of said county, together with the certificate of the recording thereof.

Witness my hand and official seal this 18th day of February, 1884.

(Sgd.) T. L. PECK,
Clerk and Recorder,

344 { SEAL CLEAR CREEK CO. } By GEO. W. KIRKLAND,
Deputy.

(Endorsed:) Certified copies of the Senaca, Hunuyoy, Canadice, and Cayuga Lodes, Argentine district, Clear Creek County, Colorado.

EXHIBIT No. 3.—*John W. Webster, examiner.*

TERRITORY OF COLORADO,
County of Clear Creek, ss:

In the district court of Clear Creek County, aforesaid.

WALTER N. WEBSTER, JOSEPH RIST,
vs.
MARSHALL SILVER MINING COMPANY OF Georgetown, Frank J. Marshall, John Wycoff, Solomon Robinson, Charles Sargent, Jackson C. Bishop. } In chancery.

Whereas the above-entitled suit was commenced without my knowledge, authority, or consent, and is now pending, and is being prosecuted against my authority and consent, I therefore hereby request and demand that the same be dismissed and discontinued, and I hereby authorize and require the clerk of said court to enter the proper order of dismissal in said cause.

Dated this 21st day of Nov., A. D. 1871.

JOSEPH RIST.

To the clerk of the district court of said county of Clear Creek.

STATE OF COLORADO,
345 *County of Clear Creek, ss:*

WALTER N. WEBSTER ET AL.
vs.
MARSHALL SILVER MG. CO. ET AL. } G. D. 644.

I hereby certify the above and foregoing to be a true and perfect copy of a certain order filed in the above cause in said court, the 22nd day of Nov', 1871.

Attest my hand and the seal of said court this 18th day of Feb'y, 1884.

{ SEAL DIS CT.T. CLEAR CREEK CO., COLO. }

H. H. ATKINS,
Clerk of the District Court of Clear Creek County.

(Endorsed:) 644. Walter N. Webster et al. vs. Marshall S. M. Co. of Georgetown et al. Order of dismissal as to Jos. Rist, compla'nt. Filed and entered of record this 22 day of November, 1871.

EXHIBIT No. 4.—*John W. Webster, examiner.*

Pleas in the district court of the second judicial district of the Territory of Colorado, in and for the county of Clear Creek, before the Hon. James B. Belford, at the August special term, A. D. 1872, to wit, on the 27th day of August.

Be it remembered that heretofore, to wit, on the 27th day of August, A. D. 1872, the following were had and entered of record in said court in the

cause of Walter N. Webster et al. were complainants and the Mar-
346 shall Silver Mining Company et al. were defendants, to wit:

WALTER N. WEBSTER
vs.
MARSHALL SILVER MINING CO. } G. D. 644.

Bill of injunction.

Now comes the complainants, by Johnson & Teller, his solicitor, and dismiss the bill of complaint in this cause, without prejudice to parties.

STATE OF COLORADO,
County of Clear Creek, ss:

WALTER N. WEBSTER
vs.
MARSHALL SILVER MINING COMPANY. } In district court.

I, H. H. Atkins, clerk of the district court of Clear Creek County, do hereby certify that the above and foregoing is a true and perfect copy of a certain order heretofore, to wit, on the 27th day of August, A. D. 1872, had and entered of record in the above entitled cause (G. D. 644) in said court, as the same appears of record in my office.

Attest my hand and the seal of said court this 18th day of Feb'y, A. D. 1884.

{ SEAL DIST. CT. CLEAR CREEK CO., COLO. }

H. H. ATKINS,
Clerk.

(Endorsed:) 644. W. N. Webster vs. Marshall S. M. Co. Order dismissing bill.

347 EXHIBIT No. 6.—*John W. Webster, examiner.*

DEPARTMENT OF THE INTERIOR, D. K. S.
GENERAL LAND OFFICE,
Washington, D. C., Feb. 8, 1882.

ALBERT JOHNSON, Esq.,
U. S. Surveyor-General, Denver, Colorado:

SIR: You are hereby informed that patents have issued for mining claims in the State of Colorado during the months of January, 1882, as follows:

Pat. No.	Name of claimant.	Name of claim.	Sur. No.
5219	August Meyer	Queen of the West Lode	425
5220	Henry Helmer	Cleopatra Lode	899
5221	Meyer B. Haas et al	Monte Cristo Lode	913
5222	Russel District G. & S. Mg. Co. of Colorado.	Bosen Plume Lode	586 A. & B
5223	Robert O. Old	Girard Lode and mill site	1048
5224	A. K. Updegraff	Hawkeye Lode	924
5227	John H. Simmons et al	St. Louis Lode	401
5229	Jacob J. Harvat	Star of the West Lode	986
5230	Frank G. & S. Mg. Co. et al	Steuben Lode	680
5233	Graham S. Mg. Co	E Pluribus Unum Lode	285

Pat. No.		Name of claimant.	Name of claim.	Sur. No.
348	5234	Henry Helmer	Eagle Bird Lode	898
	5235	Geo. G. Vivian	Neath Lode	1076
	5236	" " "	"	1077
	5238	Chas. W. Pollard	Adrian Lode	1054
	5239	Geo. H. Moller	Mammoth Lode	287
	5240	Sydenham Mills et al	Placer	881
	5241	Edwin G. Fay	"	1744
	5243	Horace H. Atkins et al	Gunnell Lode	449
	5250	Henry Helmer	Silver Wave Lode	900
	5256	Alfred Hocking	Ontanagau Lode	506
	5257	Adrian A. Pollard	Madison Lode	1061
	5258	Ed. Elisha Mack	Ella Lode	974
	5259	Little Hatchet Mg. Co. *Co*	Washington Lode	611
	5261	Thos. Manning et al	Silver Dollar Lode	591
	5262	James Reynolds et al	Scotia Lode	291
	5267	John M. S. Eagan et al	Inter Ocean Lode	1085
	5274	Catherina Feunstein	Placer	Legal sub.
	5275	John H. Erwin et al	Silver Nugget Lode	1030
	5277	Patrick White	Sun Burst Lode	1020
	5278	Chas. W. Pollard	Manzaneta Lode	1083
	5279	J. K. Doolittle et al	Ocean Lode	854
	5280	J. M. Taylor	Wall Street Lode	399
	5281	Thos. J. Old	Samuel J. Randall Lode & mill site	Legal sub.
	5283	Patrick Hughes et al	Emerald Lode	596
	5285	Wm. H. Williams et al	Forest City Lode	319
	5286	Randolph M. Vail	Evergreen Lode	964
	5287	Wm. H. Williams et al	Robert Emmet Lode	317
	5288	Erskine McClellan et al	Cayuga Lode	231
	5289	Wm. H. Williams et al	Result Lode	318
	5291	Hector Mg. Co	Hector Lode	82 A & B.
	5293	Eric Bottolfsen et el	Argo Lode and mill site	641
	5296	John H. Sayer	Topeka Lode	482
	5297	Robert O. Old	Pendery Lode	1014
	5298	Thos. S. Old	Anita Lode & mill site	888 A & B
	5299	John H. Sayer	Smith Lode	502
	5300	Robert O. Old	Eureka Lode	1049
	5304	Aaron Frost	Belle Abbie Lode	929
	5305	Stockman Mg. Co	Gauntlet Lode	568
349	5309	E. C. Wager et al	Placer	375
	5316	James J. Cobb et al	"	340
	5319	Peter Quigley et al	"	Legal sub.
	5320	Frank W. Owers	"	"
	5321	" " "	"	"
	5322	" " "	"	"
	5323	" " "	"	"
	5324	" " "	"	"
	5325	" " "	"	"
	5326	" " "	"	"
	5327	" " "	"	"

Very respectfully,

N. C. McFARLAND,
Commissioner.

I hereby certify this to be a correct copy of the original letter on file in this office.

W. H. MELDRUM,
Surveyor-General of Colorado.

U. S. SURVEYOR-GENERAL'S OFFICE,
Denver, Colorado, March 15th, 1884.

EXHIBIT 8.—*John W. Webster, examiner.*

Compass & Square Silver Lode, Argentine dist.

Know all men by these presents that we, Francis J. Marshall, John Turck, Nath'l P. Hill, Jno. O. Reynolds, Jno. Stryker, jr., Jno. T. Herrick, Augustus R. Wright, and Edward W. Burrall, are the owners by discovery of one-half of discovery claim, being the northeast half, con-

sisting of one hundred (100) feet; and by pre-emption of the following Silver Lode mining claims, viz: Northeast half of discovery and Nos. one (1), two (2), three (3), four (4), five (5), six (6), seven (7), and eight (8), northeast of the discovery claim on the Compass & Square Lode, situated in Argentine district, county of Clear Creek, Colorado Territory, said discovery being about one fourth ($\frac{1}{4}$) of a mile west from the discovery of the Wm. B. Astor, and Gen'l Grant lodes, and about three and one-fourth miles ($3\frac{1}{4}$) from Georgetown.

350

July 5, 1865.

FRANCIS J. MARSHALL.	JOHN STYKER, JR.
JOHN TURCK.	JNO. T. HERRICK.
N. P. HILL.	AUGS. R. WRIGHT.
JNO. O. REYNOLDS.	ED. W. BURRALL.

School fund 3 east.

Recorded July 7th, A. D. 1865, at 12 o'clock m.

[Rev. stamp 5c.]

P. E. CHARRUANDE,
Recorder.

We, Jeremiah Lee and L. M. Bowman, claim the southwest half of discovery claim on the Compass & Square Lode. We, the undersigned, claim the numbers set opposite our names. J. Lee No. one (1) west. L. M. Bowman No. two (2) west. Jas. Martin No. three (3) west. C. Brown No. four (4) west. H. Poynter No. five (5) west. R. Ames No. six (6) west. Robert Parker No. seven (7) west. C. Vance No. eight (8) west.

[Rev. stamp 5c.]

Recorded July 7, A. D. 1865, at 12 o'cl'k M.

P. E. CHARRUANDE,
Recorder.

351 STATE OF COLORADO,
Clear Creek County, ss:

I, F. L. Peck, clerk and recorder in said county and State aforesaid, do hereby certify that the foregoing is a true, correct, and complete copy of the location certificate of the Compass & Square Lode, as the same appears of record at page 814 of book I of the records of said county, together with the certificate of the recording thereof.

Witness my hand and official seal this 10th day of April, 1884.

{ SEAL CLEAR CREEK CO., COLO. }

F. L. PECK,
Clerk and Recorder.

Certified copy of the Compass & Square Lode.

In the matter of applications for U. S. patents heretofore filed in the district United States land office, Central City, Colo., by the Marshall Silver Mining Co., for Tunnel Lodes Nos. 5 and 6.

Register & Receiver Central City District, Central City, Colo.:

GENTLEMEN: The undersigned beg respectfully to call your attention to the application of the Marshall Silver Mining Co., for patents to

352 Tunnel Lode No. 5, being survey No. 247, and Tunnel Lode No. 6, being survey No. 248.

On the 11th day of December, A. D. 1872, the survey-general of Colorado Territory approved the plats of the above surveys, and thereafter, to wit, on the 14th day of December, A. D. 1872, the Marshall Silver Mining Co. filed in your office the usual applications under the provisions of the act of Congress approved May 10th, 1872, entitled "An act to promote the development of the mining resources of the United States."

Prior to the date of filing said application there had been filed in your office an application for patent to a lode named and called in said application the Cayuga Lode, and designated survey No. 231, and purporting to be made by Erskine McClellan, Joseph Rist, and Walter N. Webster, under date of the 14th day of December, A. D. 1872. The practice of the surveyor-general being to deduct from any surveys the surface area embraced by prior surveys, led to the confliction between the said Cayuga Lode on survey No. 231 and Tunnel Lodes 5 and 6, surveys Nos. 247 and 248, as shown on the approved plats now on file in your office. The case of the Marshall Silver Mining Company in their published notices and the notices posted on the claims and posted in your office, is for a tract of land in each application as aforesaid as follows: "Nine hundred and fifty feet of the Tunnel Lode No. 5, with fifty feet in width of surface ground," "and nine hundred and fifty feet of Tunnel Lode No. 6,
353 with fifty feet in width of surface ground." Owing to the fact that the survey of the aforesaid Cayuga Lode had been executed in the field prior to the surveys of Tunnel Lodes Nos. 5 & 6, when the surveys of the two last-named lodes were platted, a portion of the surface ground of each was deducted therefrom, as shown in the approved plats heretofore referred to.

On the 28th day of April, A. D. 1873, the application for patent to the aforesaid Cayuga Lode was in form withdrawn from the files of your office, thus vacating said application and survey No. 231.

In view of this fact, the undersigned beg respectfully that you will inform the surveyor-general of Colorado that said survey No. 231 has been withdrawn and vacated, and recommend that the undersigned be allowed to file amended plats, and field-notes of survey No. 247 and No. 248, showing the full surface area for each lode as it would have appeared had no survey of the aforesaid Cayuga Lode taken place.

Very respectfully, your obedient servant,

F. J. MARSHALL,
President of the Marshall Silver Mining Company.

I hereby certify this to be a correct copy of the original letter on file in this office.

N. H. MELDRUM,
Surveyor-General of Colorado.

U. S. SURVEYOR GENERAL'S OFFICE,
Denver, Colorado, Nov. 27, 1883.

(Endorsed:) Exhibit F, John W. Webster, examiner.

353½ EXHIBIT G.—*John W. Webster, examiner.*

GEORGETOWN, COLORADO, *May the 13th*, 1873.

Gen'l W. H. LESSING,
Denver, Colorado:

DEAR SIR: Enclosed please find documents appertaining to the case, application for patent by the Marshall Silver Mining Company, for lodes No'. 5 and 6, number of survey 247 & 248. In consequence of Cayuga Lode Survey 231, the surface ground of which conflicts with the application of the Marshall Company on No. 526, as herein heretofore stated, and the said Cayuga application having been withdrawn, and now rendered null and void, I respectfully ask that you order the deputy surveyor to make and file amended field-notes and maps, etc., in such manner and under such regulations as you may think *prefer* to direct.

Respectfully,
(Signed) MARSHALL SILVER MINING COMPANY,
By F. J. MARSHALL, *Pres't.*

I hereby certify this to be a correct copy of the original letter on file in this office.

N. H. MELDRUM,
Surveyor-General of Colorado.

U. S. SURVEYOR-GENERAL'S OFFICE,
Denver, Colorado, Nov. 27, 1883.

354 EXHIBIT H.—*John W. Webster, examiner.*

U. S. LAND OFFICE,
Central City, Colorado, May 12th, 1873.

Gen. W. H. LESSIG,
Denver, Colorado:

SIR: On the 14th day of Dec., 1872, Erskine McClellan et al. filed in this office an application for patent for 2,800 linear feet of the Cayuga Lode, situate in Griffith min. dist., Clear Creek County. On the same, day the Marshall Silver Mg. Co. filed an application for each Tunnel Lodes Nos. 5 & 6, situate in the same dist.

The survey of the Cayuga Lode was approved in your office, and was made in the field prior to that of the said Tunnel Lodes Nos. 5 & 6. The said Cayuga Lode is owned in undivided interests, and one of the applicants has withdrawn his application in due form. Since the interests are thus undivided, the withdrawal by any one party necessarily vitiates and renders null and void the entire application, and we have notified the applicants that there is now no application pending for the said Cayuga Lode.

It follows that all rights effected by the said survey and application must now be regarded as though no such survey had been made.

Very respectfully,
(Signed) SAMUEL P. LATHROP,
Register.

(Signed) WM. A. ARNOLD,
Receiver.

355 I hereby certify this to be a correct copy of the original letter on file in this office.

[S'g'd.] N. H. MELDRUM,
Surveyor-General of Colorado.

U. S. SURVEYOR-GENERAL'S OFFICE,
Denver, Colorado, Nov. 27, 1883.

EXHIBIT I.—*John W. Webster, examiner.*

No. 247. Field-notes of the Marshall Silver Mining Company's claim upon Tunnel Lode No. 5, in Griffith mining district, Clear Creek County, Colorado Territory, by Francis F. Brune, dep. U. S. surveyor, mineral dist. No. 2.

Feet. Beginning at the S. W. cor. Sec. 19, T. 4 S., R. 74 W.; var. 15° 30′ E.; thence N. 79° 35′ E.

4,987. Established cor. No. 1, being a post in mound of stones marked No. 1 & 247, from which a peak of Independent Mt. bears S. 59° E.; thence N. 50° E.

700. Set a post in mound of stones marked No. 2 & 247, from which the mouth of Marshall tunnel bears S. 44° E., 744 ft. distant; thence N. 35° E.

356 33. Intersect S. line of mineral survey No. 231, Cayuga Lode.

250. Set a post in mound of stones marked No. 3 & 247 1; thence N. 40° W.

250. Intersect N. line of mineral survey No. 231, Cayuga Lode.

50. Set a post in mound of stone marked No. 4 & 247; thence S. 35° W.

200. Intersect N. line of mineral survey No. 231, Cayuga Lode.

250. Set a post in mound of stones marked No. 5 & 247; thence S. 50° W.

590. Intersect N. line of mineral survey No. 231, Cayuga Lode.

700. Set a post in mound of stone marked No. 6 & 247; thence S. 40° E.

50. To place of beginning, containing 0.45 acres and located in SE. ¼ Sec. 19, T. 4 S., R. 74 W., and SW. ¼ Sec. 20, T. 4 S., R. 74 W.

General description.

It is a silver-bearing vein, discovered 769 ft. from the mouth of the Marshall tunnel in said tunnel. Its improvements upon the surface
357 ground of this claim consist in a shaft 60 ft. deep & 100 ft. westerly from the intersection of the lode with the Marshall tunnel at the distance of 250 ft., & the distance of 365 ft. from the intersection of said lode with the Marshall tunnel two cross-cut tunnels 75 ft. in length have been run towards the vein. The value of the labor and improvements upon the said mining claim is not less than five hundred dollars.

List of names.—Frank J. Marshall, flagman; William J. Peeples, chainman; William T. Hickok, do.

We hereby certify that we assisted Francis F. Brune, dep. surveyor, in surveying the exterior boundaries of the Marshall Silver Mining Com-

pany's claim upon Tunnel Lode No. 5, in Griffith mining district, Clear Creek County, Colorado Territory, and that said claim has been in all respects to the best of our knowledge and belief well and faithfully surveyed and the boundary monument planted according to instruction furnished by the surveyor-general.

FRANCIS J. MARSHALL.
WILLIAM J. PEEPLES.
WILLIAM T. HICKOK.

Subscribed and sworn to by the above-named persons before me, a notary public for the county of Clear Creek, in the Territory of Colorado, this 10th day of December, 1872.

[SEAL.] HENRY C. HARRINGTON,
Notary Public.

358 I, Francis F. Brune, deputy surveyor, do solemnly swear that in pursuance of an order from W. H. Lessig, surveyor of the public lands of the United States in the Territory of Colorado, bearing date the 6th day of December, 1872, & in strict conformity to the laws of the United States & instructions furnished by the said surveyor-general, I have faithfully surveyed the exterior boundaries of the Marshall Silver Mining Company's claim, upon Tunnel Lode No. 5, in Griffith mining district, Clear Creek County, Colorado Territory, I do further solemnly swear that the foregoing are the true and original field notes of such survey.

FRANCIS J. BRUNE,
Deputy Surveyor.

Subscribed by said Francis J. Brune, and sworn to before me, a notary public for Clear Creek County, in the Territory of Colorado, this 10th day of December, 1872.

[SEAL.] HENRY C. HARRINGTON,
Notary Public.

SURVEYOR GENERAL'S OFFICE,
Denver, Dec. 11th, 1882.

The foregoing field-notes of the survey of the Marshall Silver Mining Company's claim upon Tunnel Lode No. 5, having been critical examined, the necessary corrections and explanations made, the said field-notes and the surveys they describe are hereby approved.

W. H. LESSIG,
Surveyor-General of Colorado.

359 I hereby certify that the foregoing field-notes are a true and correct copy of the original field-notes on file in this office.

N. H. MELDRUM,
Surveyor General for Colorado.

U. S. SURVEYOR-GENERAL'S OFFICE,
Denver, Colorado, Nov. 27th, 1883.

I hereby certify this to be a correct copy of the original, on file in this office.

_____ _____,
Surveyor-General of Colorado.

U. S. SURVEYOR-GENERAL'S OFFICE,
Denver, Colorado, ,18 .

EXHIBIT K.—*John W. Webster, Examiner.*

United States mining laws and regulations thereunder.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
June 10, 1872.

GENTLEMEN: Your attention is invited to the act of Congress approved May 10, 1872, which is as follows, to wit:

An act to promote the development of the mining resources of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all valua-
360 able mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by the citizens of the United States, and to those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

SEC. 2. That mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the passage of this act, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing at the passage of this act shall render such limitation necessary. The end lines of each claim shall be parallel to each other.

361 SEC. 3. That the locators of all mining locations heretofore made, or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists at the passage of this act, so long as they comply with the laws of the United States, and the State, territorial, and local regulations not in conflict with said laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of said surface locations: Provided, That their right of possession to such outside parts of such veins or ledges shall be confined to such portions

thereof as lie between vertical planes drawn downward as aforesaid through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of said veins or ledges: And provided further, That nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

361½ SEC. 4. That where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of said tunnel.

SEC. 5. That the miners of each mining district may make rules and regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location or manner of recording amount of work necessary to hold possession of a mining claim, subject to the following requirements: The locations must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim

362 on each claim located after the passage of this act and until a patent shall have been issued therefor; not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the passage of this act, ten dollars' worth of labor shall be performed or improvements made each year for each one hundred feet in length along the vein until a patent shall have been issued therefor; but where such claims are held in common such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made: Provided, that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after such failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required by this act, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such dili'quent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion to comply with this act, his interest in the claim shall become the property

363 of his co-owners who have made the required expenditures.

SEC. 6. That a patent for any land claimed and located for valuable

deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this act, having claimed and located a piece of land for such purposes, who has or have complied with the terms of this act, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat, previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted as aforesaid, and shall file a copy of said notice in such land office, and shall thereupon be entitled to a patent for said land, in the manner following: The register of the land office, upon the filing of such application, plat, field-notes, notices, and affidavits shall publish a notice that such application has been made for the period of sixty
364 days in a newspaper to be by him designated as published nearest to said claim, and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit showing that the plat and notice have been posted in a conspicuous place on the claim during said period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with this act.

SEC. 7. That where an adverse claim shall be filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such
365 adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived.

It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land office, together with the certificate of the surveyor-general that the requisite

amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceeding and the judgment-roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it shall appear, from the decision of the court, that several parties are entitled
366 to separate and different portions of the claim, each party may pay for his portion of the claim with the proper fee, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Proofs of citizenship under this act, or the acts of July twenty-sixth, eighteen hundred and sixty-six, and July ninth, eighteen hundred and seventy, in the case of an individual, may consist of his own affidavit thereof, and in case of an association of persons unincorporated of the affidavit of their authorized agent, made on his own knowledge or upon information and belief, and in case of corporation organized under the laws of the United States, or of any State or Territory of the United States, by the filing of a certified copy of their charter or certificate of incorporation; and nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever.

SEC. 8. That the description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued as aforesaid for claims upon unsurveyed lands, the surveyor-general, in extending the surveys, shall adjust the same to the bound-
367 aries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

SEC. 9. That sections one, two, three, four, and six of an act entitled "An act granting the right of way to ditch and canal owners over the public lands and for other purposes," approved July twenty-sixth, eighteen hundred and sixty-six, are hereby repealed, but such repeal shall not effect existing rights. Applications for patents for mining claims now pending may be prosecuted to a final decision in the General Land Office, but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this act; and all patents for mining claims heretofore issued under the act of July twenty-sixth, eighteen hundred and sixty-six, shall convey all the rights and privileges conferred by this act where no adverse rights exist at the time of the passage of this act.

SEC. 10. That the act entitled "An act to amend an act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July ninth, eighteen hundred and seventy, shall be and remain in full force, except as to the proceedings to obtain a patent, which shall be similar to the proceedings prescribed by sections six and seven of this act for obtaining patents to vein or lode claims; but
368 where said placer claims shall be upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be re-

quired, and all placer mining claims hereafter located shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant, but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands: Provided, That proceedings now pending may be prosecuted to their final determination under existing laws; but the provisions of this act, when not in conflict with existing laws, shall apply to such cases. And provided also, that where, by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, said fractional portion of agricultural land may be entered by any party qualified by law for homestead or pre-emption purposes.

SEC. 11. That where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it include such vein or lode, and in such case (subject to the provisions of this act, and the act entitled "An act to amend an act granting the right of way to ditch and canal owners over public lands, and for other purposes," approved July ninth, eight-
369 een hundred and seventy), a patent shall issue for the placer claim, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim and twenty-five feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceeding, and where a vein or lode, such as is described in the second section of this act, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

SEC. 12. That the surveyor-general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, s shall be paid by
370 the applicants, and they shall be at liberty to obtain the same at the most reasonable rates; and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this act; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated, for the publication of mining notices in such district and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by said applicant for publication

and surveys, together with all fees and money paid the register and the receiver of the land office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land Office. The fees of the register and the receiver shall be five dollars each for filing and acting upon each application for patent or adverse claim filed, and they shall be allowed the amount fixed by law for reducing testimony to writing when done in the land office, such fees and allowances to be paid by the respective parties; and no other fees shall be charged by them in such cases. Nothing in this act shall be construed to enlarge or
371 affect the rights of either party in regard to any property in controversy at the time of the passage of this act or of the act entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July twenty-sixth, eighteen hundred and sixty-six, nor shall this act affect any right acquired under said act; and nothing in this act shall be construed to repeal, impair, or in any way affect the provisions of the act entitled "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Cumstock Lode, in the State of Nevada," approved July twenty-fifth, eighteen hundred and sixty-six.

SEC. 13. That all affidavits required to be made under this act, or the act of which it is amendatory, may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided, on personal notice of at least ten days to the opposing party; or if said party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land
372 office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

SEC. 14. That where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection: Provided, however, That the subsequent location shall have the right of way through said space of intersection, for the purposes of the convenient working of the said mine. And provided also, that where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

SEC. 15. That where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable under this act to veins or lodes: Provided, That no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this act for the superficies of the lode. The owner of a quartz-mill or reduction works not owning the mine in
373 connection wherewith, may also receive a patent for his mill-site, as provided in this section.

SEC. 16. That all acts and parts of acts inconsistent herewith are hereby repealed: Provided, That nothing contained in this act shall be construed to impair, in any way, rights or interests in mining properly acquired under existing laws.

Approved May 10, 1872.

Mineral lands open to exploration, occupation, and purchase.

1. It will be perceived that the first section of said act leaves the mineral lands in the public domain, surveyed or unsurveyed, open to exploration and purchase by all citizens of the United States, and all those who have declared their intention to become such.

Status of lode claims previously located.

2. By an examination of the several sections of the foregoing act it will be seen that the status of lode claims located previous to the date thereof is not changed with regard to their extent along the lode or width of surface, such claims being restricted and governed both as to their lateral and linear extent by the State, Territorial, or local laws, customs, or regulations which were in force in the respective districts at the date of such locations, in so far as the same did not conflict with the limitations fixed by the mining statute of July 26, 1866. (14 Stat., 251.)

374 3. Mining rights acquired under such previous locations are, however, enlarged by said act of May 10, 1872, in the following respect, viz: The locators of all such previously taken veins or lodes, their heirs and assigns, so long as they comply with the laws of Congress, and with State, territorial, or local regulations not in conflict therewith governing mining claims, are invested by said act with the exclusive possessory right of all the surface included within the lines of their locations, and of all veins, lodes, or ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downwards as to extend outside the vertical side lines of such locations at the surface, it being expressly provided, however, that the right of possession to such outside parts of said veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as aforesaid, through the end lines of their locations so continued in their own direction that such planes will intersect such exterior parts of such veins, lodes, or ledges to enter upon the surface location of another claimant.

4. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges other than the one named in the original location to such as were not adversely claimed at the

375 date of said act of May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by said act.

5. From and after the date of said act of Congress, in order to hold the possessory title to a mining claim previously located, and for which a patent has not been issued, the law requires that ten dollars shall be expended annually in labor or improvements on each claim of one hundred

feet on the course of the vein or lode until a patent shall have been issued therefor, but where a number of such claims are held in common upon the same vein or lode the aggregate expenditure that would be necessary to hold all the claims, at the rate of ten dollars per hundred feet, may be made upon any one claim; a failure to comply with this requirement in any one year subjecting the claim upon which such failure occurred to relocation by other parties, the same as if no previous location thereof had ever been made, unless the claimants under the original location shall have resumed work thereon after such failure and before such relocation.

6. Upon the failure of any one of several co-owners of a vein, lode, or ledge, which has not been patented, to contribute his proportion of the expenditures necessary to hold the claim or claims so held in ownership in common, the co-owners who have performed the labor, or made
376 the improvements as required by said act, may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditure or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid.

Patents for veins or lodes heretofore issued.

7. Rights under patents for veins or lodes heretofore granted under previous legislation of Congress are enlarged by this act so as to invest the patentee, his heirs, or assigns, with title to all veins, lodes, or ledges throughout their entire depth, the top or apex of which lies within the end and side boundary lines of his claim on the surface, as patented, extending downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of the claim at the surface. The right of possession to such outside parts of such veins or ledges to be confined to such
377 portions thereof as lie between vertical planes drawn downward through the end lines at the surface, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges, it being expressly provided, however, that all veins, lodes, or ledges, the top or apex of which lies inside such surface locations, other than the one named in the patent, which were adversely claimed at the date of said act, are excluded from such conveyance by patent.

8. Applications for patents for mining claims pending at the date of the act of May 10, 1872, may be prosecuted to final decision in the General Land Office, and where no adverse rights are affected thereby, patents will be issued in pursuance of the provisions of said act.

Manner of locating claims on veins or lodes after the passage of the act of May 10, 1872.

9. From and after the date of said act any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of fifteen hundred linear feet

along the course of any mineral vein or lode, subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of fifteen hundred feet, but in no event can a location of a vein or lode made subsequent to the act exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.

378 10. With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the act provides that the lateral extent of locations of veins or lodes made after its passage shall in no case exceed three hundred feet on each side of the middle of the vein at the surface and that no such surface rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing at the date of said act may render such limitation necessary, the end lines of such claims to be in all cases parallel to each other.

11. By the foregoing it will be perceived that no lode claim located after the date of said act can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface ground of that width can be taken depends upon the local regulations, or State or Territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width, unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

12. It is provided in said act that the miners of each district may make rules and regulations not in conflict with the laws of the United

379 States, or of the State or Territory in which such districts are respectively situated governing the location, manner of recording, and amount of work necessary to hold possession of a claim. It likewise requires that the location must be so distinctly marked on the ground that its boundaries may be readily traced. This is a very important matter, and locators cannot exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to its passage, shall contain the name or names of the locators, the date of the location, and such a descri'tion of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

13. The said act requires that no lode claim can be recorded until after the discovery of a vein or lode within the limits of the ground claimed; the object of which provision is evidently to prevent the encumbering of the district mining records with useless locations before sufficient work has been done thereon to determine whether a vein or lode has really been discovered or not.

14. The claimant should, therefore, prior to recording his claim, unless the vein can be traced upon the surface, sink a shaft, or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general

380 course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface, and should give the course and distance as nearly as practicable from the discovery shaft on the claim to some per-

manent well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, &c., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim, and render it susceptible of identification from the description thereof given in the record of locations in the district.

15. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery, or whether it
381 is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point.

16. Within a reasonable time, say twenty days after the location shall have been marked on the ground, notice thereof, accurately describing the claim in manner aforesaid, should be filed for record with the proper recorder of the district, who will thereupon issue the usual certificate of location.

17. In order to hold the possessory right to a claim of fifteen hundred feet of a vein or lode located as aforesaid the act requires that until a patent shall have been issued therefor not less than one hundred dollars' worth of labor shall be performed or improvements made thereon during each year, in default of which the claim will be subject to relocation by any other party having the necessary qualifications, unless the original locator, his heirs, assigns, or legal representatives, have resumed work thereupon after such failure and before such relocation.

18. The importance of attending to these details in the matter of location, labor, and expenditure will be the more readily perceived when it is understood that a failure to give the subject proper attention may invalidate the claim.

Tunnel rights.

382 19. The fourth section of the act provides that where a tunnel is run for the development of a vein or lode or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel to the same extent as if discovered from the surface, and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins or lodes on the line of said tunnel.

20. The effect of this section is simply to give the proprietors of a

mining tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof, and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist.

383 21. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover, it being from this point that the three thousand feet are to be counted upon which prospecting is prohibited as aforesaid.

22. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice giving the names of the parties or company claiming the tunnel right, the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity, by which to fix and determine the locus in manner hereto[illegible] set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof by stakes or monuments placed along such lines at proper intervals to the terminus of the three thousand feet from the

384 face or point of commencement of the tunnel, and the lines so marked will define and govern as to the specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

23. At the time of posting notice and marking out the lines of the tunnel as aforesaid, a full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case, stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon, the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be.

24. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

25. By a compliance with the foregoing, much needless difficulty will be avoided, and the way for the adjustment of legal rights acquired in virtue of said fourth section of the act will be made much more

385 easy and certain.

26. This office will take particular care that no improper advantage is taken of this provision of law by parties making, or professing to make,

tunnel locations ostensibly for the purposes named in the statute, but really for the purpose of monopolizing the lands lying in front of their tunnels, to the detriment of the mining interests and to the exclusion of the bona fide prospectors or miners; but will hold such tunnel claimants to a strict compliance with the terms of the act; and as reasonable diligence on their part in prosecuting the work is one of the essential conditions of their implied contract, negligence or want of due diligence will be construed as working a forfeiture of their right to all undiscovered veins on the line of such tunnel.

Manner of proceeding to obtain Government title to vein or lode claims.

27. By the sixth section of said act authority is given for granting title for mines by patent from the Government to any person, association, or corporation having the necessary qualifications, as to citizenship, and holding the right of possession to a claim in compliance with law.

28. The claimant is required in the first place to have a correct
386 survey of his claim made under authority of the surveyor-general of the State or Territory in which the claim lies; such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground.

29. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, mine, or lode, the mining district or county; whether the location is of record, and, if so, where the record may be found; the number of feet claimed along the vein, and the presumed direction thereof; the number of feet claimed on the lode in each direction from the point of discovery, or other well defined place on the claim; the name or names of adjoining claimants on the same or other lodes, or, if none adjoin, the names of the nearest claims, &c.

30. After posting the said plat and notice upon the premises, the claimant will file with the proper register and receiver a copy of such plat, and the field-notes of survey of the claim, accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted con-
387 spicuously upon the claim, giving the date and place of such posting; a copy of the notice so posted be attached to and form a part of said affidavit.

31. Attached to the field-notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described in virtue of a compliance by himself (and by his grantors if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State, or Territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent.

32. This affidavit should be supported by appropria' evidence from the mining recorder's office as to his possessory right as follows, viz: Where he claims to be a locator a full, true, and correct copy of such location

should be furnished as the same appears upon the mining records, such copy to be attested by the seal of the recorder, or if he has no seal, then he should make oath to the same being correct as shown by the records; where the applicant claims as a locator in company with others who have since conveyed their interests in the lode to him, a copy of the original record of location should be filed, together with an abstract of title from the proper recorder, under seal or oath as aforesaid, tracing the co-
388 locator's possessory rights in the claim to such applicant for patent; where the applicant claims only as a purchaser for valuable consideration a copy of the location record must be filed, under seal or upon oath as aforesaid, with an abstract of title certified as above by the proper recorder, tracing the right of possession by a continuous chain of conveyances from the original locators to the applicant.

33. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, &c.; and in such case of lost records any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

34. Upon the receipt of these papers the register will, at the expense of the claimant, publish a notice of such application for the period of sixty days in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period.

35. The notices so published and posted must be as full and com-
389 plete as possible, and embrace all the data given in the notice posted upon the claim.

36. Too much care cannot be exercised in the preparation of these notices, inasmuch as upon their accuracy and completeness will depend in a great measure the regularity and validity of the whole proceeding.

37. The claimant, either at the time of filing these papers with the register, or at any time during the sixty days' publication, is required to file a certificate of the surveyor-general that not less than five hundred dollars' worth of labor has been expended or improvements made upon the claim by the applicant or his grantors; that the plat filed by the claimant is correct; that the field-notes of the survey as filed furnish such an accurate description of the claim as will, if incorporated into a patent, serve to fully identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof.

38. It will be the more convenient way to have this certificate endorsed by the surveyor-general, both upon the plat and field-notes of survey filed by the claimant as aforesaid.

39. After the sixty days' period of newspaper publication has expired the claimant will file his affidavit, showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication.

390 40. Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the period of publication, permit the claimant to pay for the land according to the area given in the plat and field-notes of survey aforesaid, at the rate of five dollars for each

acre and five dollars for each fractional part of an acre, the receiver issuing the usual duplicate receipt therefor; after which the whole matter will be forwarded to the Commissioner of the General Land Office and a patent issued thereon if found regular.

41. In sending up the papers in the case the register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued.

42. The consecutive series of numbers of mineral entries must be continued, whether the same are of lode or placer claims.

43. The surveyor-general must continue to designate all surveyed mineral claims as heretofore by a progressive series of numbers, beginning with lot No. 37 in each township, the claim to be so designated at date of filing the plat, field-notes, &c., in addition to the local desig nation of the claim; it being required in all cases that the plat and field-notes of the survey of a claim must, in addition to the reference to permanent objects in the
391 neighborhood, describe the locus of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a remote distance from such public corner, in which latter case the reference by course and distance to permanent objects in the neighborhood will be a sufficient designation by which to fix the locus until the public surveys shall have been closed upon its boundaries.

Adverse claims.

44. The seventh section of the act provides for adverse claims; fixes the time within which they shall be filed to have legal effect, and prescribes the manner of their adjustment.

45. Said section requires that the adverse claim shall be filed during the period of publication of notice; that it must be on oath of the adverse claimant; and that it must show the "nature," the "boundaries," and the "extent" of the adverse claim.

46. In order that this section of law may be properly carried into effect, the following is communicated for the information of all concerned:

47. An adverse mining claim must be filed with the register of the same land office with whom the application for patent was filed, or,
392 in his absence, with the receiver, and within the sixty days' period of newspaper publication of notice.

48. The adverse notice must be duly sworn to before an officer authorized to administer oaths within the land district, or before the register or receiver; it will fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator; if the former, the original conveyance, or a duly certified copy thereof, should be furnished, or, if the transaction was a mere verbal one, he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claim as a locator he must file a duly certified copy of the location from the office of the proper recorder.

49. In order that the "boundaries" and "extent" of the claim may be

shown, it will be incumbent upon the adverse claimant to file a plat showing his claim and its relative situation or position with the one against which he claims, so that the extent of the conflict may be the better understood. This plat must be made from an actual survey by a United States deputy surveyor, who will officially certify thereon to its correctness; and in addition there must be attached to such plat of survey a certificate or sworn statement by the surveyor as to the approximate value of the
393 labor performed or improvements made upon the claim of the adverse party, and the plat must indicate the position of any shafts, tunnels, or other improvements, if any such exist upon the claim of the party opposing the application.

50. Upon the foregoing being filed within the sixty days aforesaid, the register, or, in his absence, the receiver, will give notice in writing to both parties to the contest that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction, to determine the question of right of possession and to prosecute the same with reasonable diligence to final judgment; and that should such adverse claimant fail to do so, his adverse claim will be considered waived, and the application for patent be allowed to proceed upon its merits.

51. When an adverse claim is filed as aforesaid, the register or receiver will endorse upon the same the precise date of filing, and preserve a record of the date of notifications issued thereon, and thereafter all proceedings on the application for patent will be suspended, with the exception of the completion of the publication and posting of notices and plat, and the filing of the necessary proof thereof until the controversy shall
394 have been adjudicated in court, or the adverse claim waived or withdrawn.

52. The proceedings after rendition of judgment by the court in such case are so clearly defined by the act itself as to render it unnecessary to enlarge thereon in this place.

Placer claims.

53. The tenth section of the act under consideration provides that the act entitled "An act to amend an act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July 9, 1870, shall be and remain in full force, except as to the proceedings to obtain a patent, which shall be similar to the proceedings prescribed by sections six and seven of this act for obtaining patents for vein or lode claims; but where said placer claims shall be upon surveyed lands and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims hereafter located shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and no such locations shall include more than twenty acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands, &c.

395 54. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat

them here, it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims, placer being fixed, however, at two dollars and fifty cents per acre or fractional part of an acre.

55. The twelfth and thirteenth sections of said act of July 9, 1870, read as follows:

SEC. 12. And be it further enacted, That claims, usually called "placers," including all forms of deposits, excepting veins of quartz or other rock in place, shall be subject to entry and patent, under this act, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims: Provided, That where the lands have been previously surveyed by the United States the entry in its exterior limits shall conform to the legal subdivision of the public lands, no further survey or plat in such case being required, and the lands may be paid for at the rate of two dollars and fifty cents per acre: Provided further, That legal subdivisions of forty acres may be subdivided into ten-acre tracts, and that two or more persons or associations of persons having con-
396 tiguous claims of any size, although such claims may be less than ten acres, each may make joint entry thereof: And provided further, That no location of a placer claim hereafter made shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

SEC. 13. And be it further enacted, That where said person or association, they and their grantors, shall have held and worked their said claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claim for such period shall be sufficient to establish a right to a patent thereto under this act in the absence of any adverse claim: Provided, however, That nothing in this act shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

56. It will be observed that that portion of the first proviso to said twelfth section which requires placer claims upon surveyed lands to conform to legal subdivisions *is* repealed by the present statute with
397 regard to claims heretofore located; but that where such claims are located previous to survey and do not conform to legal subdivisions survey plat and entry thereof may be made according to the boundaries fixed by local rules; but that where such claims do conform to legal subdivisions the entry may be effected according to such legal subdivisions without the necessity of further survey or plat.

57. In the second proviso to said twelfth section authority is given for the subdivision of forty-acre legal subdivisions into ten-acre lots, which is intended for the greater convenience of miners in seggregating their claims both from one another and from intervening agricultural land.

58. It is held, therefore, that under a proper construction of the law these

ten-acre lots in mining districts should be considered and dealt with, to all intents and purposes, as legal subdivisions, and that an applicant having a legal claim which conforms to one or more of these ten-acre lots, either adjoining or cornering, may make entry thereof, after the usual proceedings, without further survey or plat.

59. In cases of this kind, however, the notice given of the application must be very specific and accurate in description, and as the forty-acre tracts may be subdivided into ten-acre lots, either in the form of squares of ten by ten chains, or of parallelograms five by twenty chains, so long as the
398 lines are parallel and at right angles with the lines of the public surveys, it will be necessary that the notice and application state specifically what ten-acre lots are sought to be patented, in addition to the other data required in the notice.

60. Where the ten-acre subdivision is in the form of a square it may be described, for instance, as the "SE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$," or if in the form of a parallelogram as aforesaid, it may be described as the "W. $\frac{1}{2}$ of the W. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ (or the N. $\frac{1}{2}$ of the S. $\frac{1}{2}$ of the NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$) of section , township , range ," as the case may be; but in addition to this description of the land, the notice must give all the other data that is required in a mineral application, by which parties may be put on inquiry as to the premises sought to be patented.

61. The proceedings necessary for the adjustment of rights where a known vein or lode is embraced by a placer claim, are so clearly defined in the eleventh section of the act as to render any particular instructions upon that point at this time unnecessary.

62. When an adverse claim is filed to a placer application, the proceedings are the same as in the case of vein or lode claims, already described.

399 *Quantity of placer ground subject to location.*

63. By the twelfth section of the said amendatory act of July 9, 1870 (third proviso), it is declared "that no location of a placer claim hereafter made shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys," &c.

64. The tenth section of the act of May 10, 1872, provides that "all placer mining claims hereafter located shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such locations shall include more than twenty acres for each individual claimant."

65. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after the passage of said act of May 10, 1872, no location made by an individual can exceed twenty acres, and no location made by an association of individuals can exceed one hundred and sixty acres, which location of one hundred and sixty acres cannot be made by a less number than eight bona fide locators, but that whether

as much as twenty acres can be located by an individual, or one
400 hundred and sixty acres by an association, depends entirely upon the mining regulations in force in the respective districts at the date of the location; it being held that such mining regulations are in no way enlarged by said acts of Congress, but remain intact and in full force with regard to the size of locations, in so far as they do not permit locations in excess of the limits fixed by Congress, but that where such regulations permit locations in excess of the maximums fixed by Congress, as aforesaid, they are restricted accordingly.

66. The regulations hereinbefore given as to the manner of marking locations on the ground and placing the same on record, must be observed in the case of placer locations so far as the same are applicable, the law requiring, however, that where placer claims are upon surveyed public lands, the locations must hereafter be made to conform to legal subdivisions thereof.

67. With regard to the proofs necessary to establish the possessory right to a placer claim, the said thirteenth section of the act of July 9, 1870, provides that "where said person or association, they and their grantors, shall have held and worked their said claims for a period equal to the time prescribed by the statute of limitations for mining claims for the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act in the absence of any adverse claim."

401 68. This provision of law will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

69. When an applicant desires to make his proof of possessory right in accordance with this provision of law, you will not require him to produce evedence of location, copies of conveyances, or abstracts of title, as in other cases, but will require him to furnish a duly certified copy of the statute of limitations of mining claims for the State or Territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application, the area thereof, the nature and extent of the mining that has been done thereon, whether there has been any opposition to his possession or litigation with regard to his claim; and, if so, when thesame ceased, whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

70. There should likewise be filed a certificate, unde' seal of the
402 court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever, involving the right of possession to any portion of the claim applied for is pending; and that there has been no litigation before said court affecting the title to said claim, or any part thereof, for a period equal to the time fixed by the statute of limitations for mining claims in

the State or Territory as aforesaid, other than that which has been finally decided in favor of the claimants.

71. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person, or persons, of credibility who may be cognizant of the facts in the case, and are capable of testifying understandingly in the premises.

72. It will be to the advantage of claimants to make their proofs as full and complete as practicable.

Appointment of deputy surveyors of mining claims. Charges for surveys and publications. Fees of registers and receivers, &c.

73. The twelfth section of said act of May 10, 1872, provides for the appointment of surveyors of mineral claims, authorizes the Com-
403 missioner of the General Land Office to establish the rates to be charged for surveys and for newspaper publications, prescribes the fees allowed to the local officers for receiving and acting upon applications for mining patents and for adverse claims thereof, &c.

74. The surveyors-general of the several districts will, in pursuance of said law, appoint in each land district as many competent deputies for the survey of mining claims as may seek such appointment, it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States; the system of making deposits for mineral surveys, as required by previous instructions, being hereby revoked as regards field-work, the claimant having the option of employing any deputy surveyor within such district to do the work in the field.

75. With regard to the platting of the claim and other office work in the surveyor-general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer, or designated depository, in favor of the United States treasurer, to be passed to the credit of the fund created by "individual depositors for surveys of the public lands," and file with the surveyor-general duplicate certificates of such deposit, in the usual manner.

76. The surveyors-general will endeavor to appoint mineral dep-
404 uty surveyors as rapidly as possible, so that one or more may be located in each mining district, for the greater convenience of miners.

77. The usual oaths will be required of these deputies and their assistants as to the correctness of each survey executed by them.

78. The law required that each applicant shall file with the register and receiver a sworn statement of all charges and fees paid by him for publication of notice and for survey, together with all fees and money paid the register and receiver, which sworn statement is required to be transmitted to this office for the information of the Commissioner.

79. Should it appear that excessive or exhorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

80. The fees payable to the register and receiver for filing and acting upon applications for mineral-land patents, made under said act of May

10, 1872, are five dollars to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of five dollars payable to each officer by an adverse claimant at the time of filing his adverse claim.

81. All fees or charges under this act, or the acts of which it is amendatory, may be paid in United States currency.

405 82. The register and receiver will at the close of each month forward to this office an abstract of mining applications filed, and a register of receipts accompanied with an abstract of mineral lands sold.

83. The fees and purchase-money received by registers and receivers must be placed to the credit of the United States in the receiver's monthly and quarterly account, charging up in the disbursing account the sums to which the register and receiver may be respectively entitled as fees and commissions with limitations in regard to the legal maximum.

84. The thirteenth section of the said act of May 10, 1872, provides that all affidavits required under said act, or the act of which it is amendatory, may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, in which case they will have the same force and effect as if taken before the register or receiver, and that in cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken before any such officer on personal notice of at least ten days to the opposing party, and if said party cannot be found, then after publication of notice for at least once a week for thirty days in a newspaper to be designated by the register as published nearest to the location of such land, proof of which notice must be made to the register.

85. The instructions heretofore issued with regard to disproving
406 the mineral character of lands are accordingly modified so as to allow proof upon that point to be taken before any officer authorized to administer oaths within the land district, and that where the residence of the parties who claim the land to be mineral is known such evidence may be taken without publication ten days after the mineral claimants or affiants shall have been personally notified of the time and place of such hearing; but in cases where such affiants or claimants cannot be served with personal notice, or where the land applied for is returned as mineral upon the township plat, or where the same is now or may hereafter be suspended for non-mineral proof, by order of this office, then the party who claims the right to enter the land as agricultural will be required at his own expense to publish a notice once a week for five consecutive weeks, in the newspaper of largest circulation published in the county within which said land is situated, or if no newspaper is published within such county, then in a newspaper published in an adjoining county; the newspaper in either case to be designated by the register, which notice must be clear and specific, embracing the points required in notices under instructions from this office of March 20, 1872, and must name a day after the last day of publication of such notice, when testimony as the character of the land will be taken, stating before what magistrate or other officer such hearing will be had and the place of such hearing.

407 *Mill-sites.*

86. The fifteenth section of said act provides "That where non-mineral land not contiguous to the vein or lode is used or occupied by the propri-

etor of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable under this act to veins or lodes: Provided, That no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this act for the superficies of the lode. The owner of a quartz mill or reduction works not owning a mine in connection therewith, may also receive a patent for his mill-site as provided in this section."

87. To avail themselves of this provision of law, parties holding the possessory right to a vein or lode, and to a piece of land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by the local rules, regulations, or customs, the proprietors of such vein or lode may file in the proper land office their application for a patent, under oath, in manner already set forth herein, which application, together with the plat and field-notes, may include, embrace
408 and ascribe in addition to the vein or lode such non-contiguous mill-site, and after due proceedings as to notice, &c., a patent will be issued conveying the same as one claim.

88. In making the survey in a case of this kind the lode-claim should be described in the plat and field-notes as "Lot No. 37, A," and the mill-site as "Lot No. 37, B," or whatever may be its appropriate numerical designation, the course and distance from a corner of the mill-site to a corner of the lode-claim to be invariably given in such plat and field-notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill-site as well as upon the vein or lode for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill-site, but the whole area of both lode and mill-site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill-site claim.

89. In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode, the law permits him to make application therefor in the same manner prescribed herein for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill-site at said price per acre.

409 90. In every case there must be satisfactory proof that the land claimed as a mill-site is not mineral in character, which proof may, where the matter is unquestioned, consist of a sworn statement of the claimant, supported by that of one or more disinterested persons capable, from acquaintance with the land, to testify understandingly.

91. The law expressly limits mill-site locations, made from and after its passage to five acres, but whether so much as that can be located depends upon the local customs, rules, or regulations.

92. The registers and receivers will preserve an unbroken consecutive series of numbers for all mineral entries.

Proof of citizenship of mining claimants.

93. The proof necessary to establish the citizenship of applicants for mining patents, whether under the present or past enactments, it will be

seen by reference to the seventh section of the act under consideration, may consist, in the case of an individual claimant, of his own affidavit of the fact; in the case of an association of persons not incorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief, that the several members of such association are citizens; and in the case of an incorporated company, organized under the laws of the United States or the laws of any State or Territory of the United States, by the filing of a certified copy of their charter or certificate of incorporation.

94. These affidavits of citizenship may be taken before the register or receiver or any other officer authorized to administer oaths within the district.

95. Copies of the previous mining statutes of Congress, dated, respectively, July 26, 1866, and July 9, 1870, are hereto attached. Sections one, two, three, four, and six of the former being expressly repealed by the ninth section of the act of May 10, 1872, aforesaid, which in its sixteenth section also repeals all acts and parts of acts inconsistent with its provisions.

96. The foregoing will be followed in due time by such further instructions as actual experience in the administration of the statute may render necessary.

Very respectfully, your obedient servant,

WILLIS DRUMMOND,
Commissioner.

To registers and receivers and surveyors general.

A.—Chapter celxii.

An act granting the right of way to ditch and canal owners over the public lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States. (Repealed.)

SEC. 2. And be it further enacted, That whenever any person, or association of persons, claim a vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to the local customs or rules of miners in the district where the same is situated, and having expended in actual labor and improvements thereon an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant, or association of claimants, to file in the local land office a diagram of the same, so extended, laterally or otherwise, as to conform to the local laws, customs, and rules of miners, and to enter such tract and receive a patent therefor, granting such

mine, together with the right to follow such vein or lode with its dips,
angles, and variations to any depth, although it may enter the land
412 adjoining, which land adjoining shall be sold subject to this condition. (Repealed.)

SEC. 3. And be it further enacted, That upon the filing of the diagram as provided in the second section of this act, and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the register of the land office shall publish a notice of the same in a newspaper published nearest to the location of said claim, and shall also post such notice in his office for the period of ninety days; and after the expiration of said period, if no adverse claim shall have been filed, it shall be the duty of the surveyor-general, upon application of the party, to survey the premises and make a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed; and upon the payment to the proper officer of five dollars per acre, together with the cost of such survey, plat, and notice, and giving satisfactory evidence that said diagram and notice have been posted on the claim during said period of ninety days, the register of the land office shall
transmit to the General Land Office said plat, survey, and descrip-
413 tion, and a patent shall issue for the same thereupon. But said plat, survey, or description shall in no case cover more than one vein or lode, and no patent shall issue for more than one vein or lode, which shall be expressed in the patent issued. (Repealed.)

SEC. 4. And be it further enacted, That when such location and entry of a mine shall be upon unsurveyed lands, it shall and may be lawful, after the extension thereto of the public surveys, to adjust the surveys to the limits of the premises, according to the location and possession, and plat aforesaid; and the surveyor-general may, in extending the surveys, vary the same from a rectangular form to suit the circumstances of the country and the local rules, laws, and customs of miners: Provided, That no location hereafter made shall exceed two hundred feet in length along the vein for each locator, with an additional claim for discovery to the discoverer of the lode, with the right to follow such vein to any depth, with all its dips, variations, and angles, together with a reasonable quantity of surface for the convenient working of the same as fixed by local rules: And provided further, That no person may make more than one location on the same lode, and not more than three thousand feet shall be taken in any one claim by any association of persons. (Repealed.)

SEC. 5. And be further enacted, That as a further condition
414 of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

SEC. 6. And be it further enacted, That whenever any adverse claimants to any mine, located and claimed as aforesaid shall appear before the approval of the survey, as provided in the third section of this act, all proceedings shall be stayed until final settlement and adjudication in the courts of competent jurisdiction of the rights of possession to such claim, when a patent may issue as in other cases. (Repealed.)

SEC. 7. And be it further enacted, That the President of the United States be, and he is hereby, authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this act.

415 SEC 8. And be it further enacted, That the right of way for the construction of highways over public lands not reserved for public uses is hereby granted.

SEC. 9. And be it further enacted, That whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same, and the right of way for the construction of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed: Provided however, That whenever, after the passage of this act, any person or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 10. And be it further enacted, That wherever, prior to the passage of this act, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States or persons who have declared their intention to become citizens, which homesteads have been made, improved,
416, 417 and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the said settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres, or said parties may avail themselves of the provisions of the act of Congress approved May twenty, eighteen hundred and sixty-two, entitled "An act to secure homesteads to actual settlers on the public domain," and acts amendatory thereof.

SEC. 11. And be it further enacted, That upon the survey of the lands aforesaid the Secretary of the Interior may designate and set apart such portions of the said lands as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands of the United States, and subject to all the laws and regulations applicable to the same.

Approved July 26, 1866.

B.—Chap. ccxxxv.

An act to amend an act granting the right of way to ditch and canal
418 owners over the public lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act granting the right of way to ditch and canal owners over the public lands, and for other pur-

poses, approved July twenty-six, eighteen hundred and sixty-six, be, and the same is hereby, amended by adding thereto the following additional sections, numbered twelve, thirteen, fourteen, fifteen, sixteen, and seventeen, respectively, which shall hereafter constitute and form a part of the aforesaid act.

SEC. 12. And be it further enacted, That claims usually called placers, including all forms of deposit, excepting veins of quartz or other rock in place, shall be subject to entry and patent under this act under like circumstances and conditions, and upon similar proceedings as are provided for vein or lode claims: Provided, That where the lands have been previously surveyed by the United States the entry in its exterior limits shall conform to the legal subdivision of the public lands, no further survey or plat in such case being required, and the lands may be paid for at the rate of two dollars and fifty cents per acre: Provided further, That legal subdivisions of forty acres may be subdivided into ten-acre tracts; and that two or more persons, or associations of persons, having con-
419 tiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof: And provided further, That no location of a placer claim hereafter made shall exceed one hundred and sixty acres for any one person, or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

SEC. 13. And be it further enacted, That where said person or association, they and their grantors, shall have held and worked their said claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act in the absence of any adverse claim: Provided, however, That nothing in this act shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

SEC. 14. And be it further enacted, That all ex-parte affidavits required to be made under this act, or the act of which it is amendatory, may
420 be verified before any officer authorized to administer oaths within the land district where the claims may be situated.

SEC. 15. And be it further enacted, That registers and receivers shall receive the same fees for services under this act as are provided by law for like services under other acts of Congress, and that effect shall be given to the foregoing act according to such regulations as may be prescribed by the Commissioner of the General Land Office.

SEC. 16. And be it further enacted, That so much of the act of March third, eighteen hundred and fifty-three, entitled "An act to provide for the survey of the public lands in California, the granting of pre-emption rights, and for other purposes," as provides that none other than township lines shall be surveyed where the lands are mineral, is hereby repealed, and the public surveys are hereby extended over all such lands: Provided, That all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the

expense of the claimants: And provided further, That nothing herein contained shall require the survey of waste or useless lands.

SEC. 17. And be it further enacted, That none of the rights conferred by sections five, eight, and nine of the act to which this act is amendatory shall be abrogated by this act, and the same are hereby extended to all the public lands affected by this act, and all patents granted or pre-emption or homesteads allowed shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights as may have been acquired under or recognized by the ninth section of the act of which this act is amendatory. But nothing in this act shall be construed to repeal, impair, or in any way affect the provisions of the "Act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock Lode in the State of Nevada," approved July twenty-fifth, eighteen hundred and sixty-six.

Approved July 9, 1870.

421 *The tunnel amendment.*

On the 6th day of December, 1874, we made a brief reference to the passage of an amendment of the act of Congress of May 10, 1872, in regard to work done on different claims on a lode by a tunnel. We have just received from Hon. Wm. Helmick, of Ohio, a copy of the bill as it passed, of which we append:

Be it enacted, &c., That the fifth section of said act be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purpose of developing a lode or lodes owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lodes in order to hold the same as required by said act.

422 EXHIBIT L.—*John W. Webster, examiner.*

STATE OF COLORADO,
Office of the Colorado Secretary of State.

UNITED STATES OF AMERICA,
State of Colorado, ss;

I, Melvin Edwards, secretary of state of the State of Colorado, do hereby certify that the annexed is a full, true, and complete transcript of the certificate of incorporation of the Colorado Central Consolidated Mining Company, which was filed in this office the fourth day of February, A. D. 1880, at 9 o'clock a. m., and admitted to record.

In testimony whereof I have hereunto set my hand an' affixed the great seal of the State of Colorado, at the city of Denver, this 31st day of December, A. D. 1883.

SEAL STATE OF COLORADO. (S'g'd) MELVIN EDWARDS,
Secretary of State.

STATE OF NEW YORK,
City and County of New York, ss:

Be it known that we, the undersigned, all of the city, county, and State of New York, do by these presents, pursuant to and in conformity
423 with the act of the legislature of the State of New York, passed Feb'y 17, A. D. 1848, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," and the several acts of the said legislature supplemental thereto and amendatory thereof, associate together and form a body corporate under the name and style of The Colorado Central Consolidated Mining Company. The objects for which said corporation is formed are as follows, to wit: To carry on the business of silver mining and smelting; to purchase, hold, and convey any real and personal estate whatever which may be necessary to enable the said company to carry on the said operations named as above in a certain tract of land situated near Georgetown, Clear Creek Co., Colorado, now owned by Paul Lichtenstein and F. J. Marshall, and to be purchased by said corporation for the purpose of carrying on its said business.

That the capital stock of said corporations shall be three million dollars ($3,000,000), which shall be divided into three hundred thousand shares of the par value of ten ($10) each.

The said corporation shall commence on the 26th day of Nov., 1879, and shall continue in existence for the term of fifty years.

The number of trustees of said corporation shall be nine, whose names are as follows: Paul Lichtenstein, Herman R. Baltzer, Charles C.
424 Dodge, Dennis C. Wilcox, William H. Guion, George Turnbull, James C. Parrish, Charles F. Fay, Peter J. Claassen, who shall manage the concerns of the corporation for the first year.

The business office of said corporation shall be in the city, county, and State of New York, and the operations of said corporation, or some part thereof, shall be carried on outside of the State of New York, to wit: Near Georgetown, Clear Creek Co., Colorado.

Dated this 26th day of November, A. D. 1879.

JAMES C. PARRISH.	[L. S.]
H. R. BALTZER.	[L. S.]
CHARLES C. DODGE.	[L. S.]
PAUL LICHTENSTEIN.	[L. S.]
WM. H. GUION.	[L. S.]
GEO. TURNBULL.	[L. S.]
D. C. WILCOX.	[L. S.]
CHAS. F. FAY.	[L. S.]
PETER J. CLAASSEN.	[L. S.]

STATE OF NEW YORK,
City and County of New York, ss:

On this 26th day of November, 1879, before me personally apppeared Paul Lichtenstein, Herman R. Baltzer, Charles C. Dodge, Dennis C. Wil-
cox, William H. Guion, George Turnbull, Charles F. Fay, Peter
425 J. Chaasen, and James C. Parrish, to me personally known to be the persons described in and who executed the foregoing instru-

ment, and severally acknowledged that they executed the same for the purpose therein set forth.

In witness whereof I have hereunto affixed my hand and seal of office the day and year above set forth.

[L. S.] HOWARD PAYSON WILDS,
Notary Public, N. Y. Co.

(Endorsed:) Filed 28 Nov., 1879.

STATE OF NEW YORK,
City and County of New York, ss:

I, William A. Butler, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original certificate of incorporation on file in my office, and that the same is a correct transcript therefrom and of the whole of such original.

In witness whereof I have hereunto subscribed my name and affixed my official seal this tenth day of January, 1880.

[SEAL.] WM. A. BUTLER,
Clerk.

426 (Endorsed:) Colorado Central Consolidated Mining Company. Filed in the office of the secretary of state Feb. 4, 1880, at 9 o'clock a. m. N. H. Meldrum, secretary of state, by J. M. Galloway, deputy.

(Endorsed:) The Colorado Central Consolidated Mining Company. Certified copy of the certificate of incorporation.

EXHIBIT M.—*John W. Webster, examiner.*

STATE OF COLORADO,
Clear Creek County, ss:

I, F. L. Peck, clerk and recorder in and for said county and State, do hereby certify that I have made dil/igent search in and through the records of said county, and cannot find, either on file or record, the articles of incorporation of The Colorado Central Consolidated Mining Company.

Witness my hand and official seal this 26th day of December, A. D. 1883.

{ SEAL CLEARO CREEK CO., COL. } (S'g'd) F. L. PECK,
Clerk & Recorder,
By GEO. W. KIRKLAND,
Deputy.

427 EXHIBIT N.—*John W. Webster, examiner.*

This indenture, made the sixteenth day of June, in the year of our Lord one thousand eight hundred and seventy-three, between the Marshall Silver Mining Company of Georgetown, organized under the laws of the Territory of Colorado, by Francis J. Marshall, its president, and Frank C. Marshall, its secretary, party of the first part, and William P. Linn, of Georgetown, Clear Creek County, Colorado Territory, party of the

second part, have, for and in consideration of the sum of five hundred dollars, lawful money of the United States to us in hand paid, the receipt whereof is hereby acknowledged, bargained, sold, released, conveyed, and quit-claimed unto the said William P. Linn, all of the right, title, and interest in and to the following-described mining property, lode, or vein, of that certain lode known as the Colorado Central Lode, Mine, or Vein, situate on the southeastern slope of Leavenworth Mountain, in Griffith mining district, Clear Creek County, Colorado Territory, and described as follows, to wit: Beginning at a point two hundred and sixty-nine feet west from the centre line of the Marshall Tunnel, and running thence westerly along the vein of said lode to a point seven hundred and fifty feet west from said center of said tunnel, the discovery shaft on said lode included in the distance above described, about two hundred feet southerly from the McCoy Lode, and about eighty-eight feet in a northwesterly direction from the extreme west shaft on the Equator Lode, as located November 30,
428 A. D. 1872, and recorded in book 15, page 302, in the office of the recorder of said Clear Creek County; also twenty-five feet of the surface ground on each side of the center of said vein or lode, in width, for the whole length thereof as above described, and that the said party of the second part, his heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part, its successors, or assigns, or of any other person or persons lawfully claiming or to claim the same by virtue of any rights, in any manner acquired or obtained, by, through, or under the said party of the first part, and that said premises are now free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assignments, and encumberances of what nature or kind soever, and that the said party of the first part, and its successors and assigns and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest of, in, or to the herein granted premises by, from, under, or in trust for him or them, shall and will at all times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do, and execute, or
429 cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances, in the law for the better and more effectually vesting and confirming the premises hereby conveyed, or so intended to be, in and to the said party of the second part, his heirs or assigns, or his or their counsel learned in the law shall be reasonably advised, devised, or required; and particularly shall said first party, its successors and assigns, make, execute, acknowledge, and deliver to the said second party, his heirs or assigns, by such deed or deeds of further conveyance coextensive with any and all titles that said first party may receive by virtue of a patent from the Government of the United States of, in, or to the above said described property, or any part thereof, upon reasonable request therefor being made by said second party, his heirs or assigns, together with all the dips and angles, and also all the metals, ores, gold and silver bearing quartz-rocks & earth therein, and all the rights, privileges, and fran-

chises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the said premises and every part and parcel thereof.

To have and to hold, all and singular, the said premises, together
430 with the appurtenances and privileges thereto incident and appurtenant, unto the said party of the second part, his heirs and assigns forever.

Witness, The Marshall Silver Mining Company of Georgetown, by Francis J. Marshall and Frank C. Marshall, respectively its president and secretary, authorized so to sign by an order and resolution of said company passed February 4th, A. D. 1873.

MARSHALL SILVER MINING COMPANY OF GEORGETOWN,
{MARSHALL SILVER MINING CO. CORPORATE SEAL.} By FRANCIS J. MARSHALL, *Pres't.*
FRANK C. MARSHALL, *Sec'y.*

TERRITORY OF COLORADO,
County of Clear Creek, ss:

On this seventeenth day of June, A. D. 1873, before me, a notary public in and for said county and Territory, before me personally came Francis J. Marshall and Frank C. Marshall, being respectively the president and secretary of the Marshall Silver Mining Company of Georgetown, to me personally known to be the individual' whose names are subscribed to the foregoing instrument as president and secretary of the Marshall Silver Mining Company of Georgetown, and they acknowledge to me that they executed the same as the president and secretary of said company,
431 as its free and voluntary act and deed, for the uses and purposes therein mentioned, and in pursuance of the order and resolution of said company passed at a meeting held at said company's office, in Georgetown, on the 4th day of February, A. D. 1873, directing such deed to be executed by signing the same as president and secretary thereof, and thereto affixing its corporate seal.

In witness whereof I have hereunto set my hand and seal the day and year first above written.

[NOTARIAL SEAL.] CHARLES E. FISH, *Notary Public.*

Record June 17, 1873, at 9½ o'clock a. m.

WM. SPRUANCE, *Recorder,*
Per H. A. SPRUANCE, *Deputy.*

STATE OF COLORADO,
Clear Creek County, ss:

I, clerk and recorder in and for said county and State aforesaid, do hereby certify that the foregoing is a true, correct, and complete copy of deed Marshall Silver Mining Company of Georgetown to William P. Linn, as

the same appears of record at page 396 of book No. 21 of the records of said county, together with the certificate of the recording thereof.

Witness my hand and official seal this 6th day of November, 1883.

{ SEAL CLEAR CREEK } (S'g'd) FRANK L. PECK,
432 { CO., COLORADO. } *Clerk and Recorder.*

(Endorsed:) Certified copy of deed Marshall Silver Mining Company of Georgetown, to William P. Linn.

EXHIBIT O.—*John W. Webster, examiner.*

This indenture, made this 17th day of November, in the year of our Lord one thousand eight hundred and seventy-nine, between The Marshall Silver Mining Company, a corporation organized under the laws of the Territory (now State) of Colorado, party of the first part, and George Turnbull, of the city, county, and State of New York, party of the second part—

Witnesseth, that the said party of the first part, for and in consideration of the sum of two hundred and fifty thousand dollars, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents does grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, all the following-described real estate, situated in Griffith mining district, county of Clear Creek, State of Colorado, to wit:

Tunnel Lode No. 5, mining claim, nine hundred and fifty feet in length, known as Survey Lot No. 326. Tunnel Lode No. 6, mining claim, nine hundred and fifty feet in length, known as Survey Lot No, 248. Tunnel Lode No. 7, mining claim, fifteen hundred
433 feet in length, known as Survey Lot No. 274, Tunnel Lode No. 8, mining claim, fourteen hundred and eighty-six $\frac{8}{10}$ feet, known as Survey Lot No. 275. Tunnel Lode No. 10, mining claim, known as Survey Lot No. 531, as fifteen hundred feet in length, and the mill-site therewith, patented as Survey Lot No. 531 B. The William B. Astor Lode, mining claim, Survey Lot No. 251, eight hundred feet in length, and the mill-site therewith, patented as parcel of said Survey Lot No. 251. The Reynolds Lode, mining claim, Survey Lot No. 515, seven hundred and fifty feet in length. The Robinson Lode, mining claim, Survey Lot No. 405, in length fifteen hundred feet. The Bull Dog Lode, mining claim, six hundred feet in length, known as Survey Lot No. 256, and the east five hundred and fifty feet of the O. K. Lode, mining claim, Survey Lot No. 257; for all which several mining claims patents of the United States have issued, and as well for the said several mill-sites, together with all and singular the veins, lodes, mines, minerals, dumps, buildings, mining plant and fixtures, easements, waters, water rights, ditches, improvements, rights, privileges, and appurtenances thereunto in anywise belonging: To have and to hold the lands, tenements, and hereditaments hereby conveyed unto the said party of the second part, his heirs and assigns, forever. And the said party of the first part, for itself, its successors, executors, and administrators, doth hereby covenant and agree
with the said party of the second part, his heirs and assigns, that
434 the said premises and every part thereof are free and clear of and from any and all liens, incumbrances, trusts, and taxes; and that

it, the said party of the first part, its successors, executors, and administrators, unto the said party of the second part, his heirs and assigns, the said premises and every part thereof against itself, its heirs and assigns, and every other person lawfully claiming or to claim the same, or any part thereof, to the full extent of the estate and property by the United States under its letters patent granted, shall and will warrant and forever defend.

In witness whereof the said party of the first part hath hereunto set its corporate name and seal at the hand of Francis J. Marshall, its president, thereto instructed and authorized.

{CORPORATE SEAL.} MARSHALL SILVER MINING COMPANY OF GEORGETOWN,

By F. J. MARSHALL, *its President.*

EARNEST LE NEVE FOSTER, *Secretary.*

Sealed and delivered in presence of—

STATE OF COLORADO,

County of Arapahoe, ss:

I, William B. Tebbett, a notary public in and for said county, do hereby certify that Francis J. Marshall, president of the within-named
435 corporation, The Marshall Silver Mining Company of Georgetown, who is to me personally known to be such president and the same person described in and who executed the within indenture as such president, personally appeared before me this day and acknowledged that said corporation signed, sealed, and delivered the said indenture as its free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and notarial seal this 17th day of November, A. D. 1879.

[L. S.] WILLIAM B. TEBBETTS,
Notary Public.

Recorded January 6th, 1880, 2 o'c. p. m.

S. S. HORTON,
Recorder.

STATE OF COLORADO,

Clear Creek County, ss:

I, F. L. Peck, clerk & recorder in and for said county and State, do hereby certify that the foregoing is a true, correct, and complete copy of deed from The Marshall Silver Mining Company to George Turnbull, as the same appears of record at page 197 of book No. 49, records of said county, together with the certificate of the recording thereof.

Witness my hand and official seal this 26th day of December, 1883.

{SEAL OF CLEAR CREEK COUNTY, COLORADO.} (S'g'd) F. L. PECK,
Clerk & Recorder,
By GEO. W. KIRKLAND,
Deputy.

436 (Endorsed:) Certified copy of deed. Marshall Silver M. Co. to Geo. Turnbull.

EXHIBIT P.—*John W. Webster, examiner.*

This indenture, made this 15th day of December, one thousand eight hundred and seventy-nine, between George Turnbull, of the city, county,

and State of New York, party of the first part, and the Colorado Central Consolidated Mining Company, a corporation organized *and* under the general laws of the State of New York for the formation of corporations for manufacturing, mining, &c., purposes, party of the second part—

Witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar, and of other good and valuable considerations to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents does grant, bargain, sell, and convey unto the said party of the second part its successors and assigns, all the following described real estate, situated in Griffith mining district, county of Clear Creek, State of Colorado, to wit: Tunnel Lode No. 5, mining claim, nine hundred and fifty feet in length, known as Survey Lot No. 326; Tunnel Lode No.
437 6, mining claim, nine hundred and fifty feet in length, known as Survey Lot No. 248; Tunnel Lode No. 7, mining claim, fifteen hundred feet in length, known as Survey Lot No. 247; Tunnel Lode No. 8, mining claim, fourteen hundred and eighty-six & $\frac{8}{10}$ feet, known as Survey Lot No. 275; Tunnel Lode No. 10, mining claim, known as Survey Lot No. 531 A, fifteen hundred feet in length and the mill-site therewith, patented as Survey Lot No. 531 B; the William B. Astor Lode, mining claim, Survey Lot No. 251, eight hundred feet in length and the mill-site therewith, patented as parcel of said Survey Lot No. 251; the Reynolds Lode, mining claim, Survey Lot No. 515, seven hundred and fifty feet in length; the Robinson Lode, mining claim, Survey Lot No. 405, in length fifteen hundred feet; the Bull Dog Lode, mining claim, six hundred feet in length, known as Survey Lot No. 256, and the east five hundred and fifty feet on the O. K. Lode, mining claim, Survey Lot No. 257; for all which several mining claims patents of the United States have issued, and as well for the said several mill sites, together with all and singular the veins, lodes, mines, minerals, dumps, buildings, mining plant and fixtures, easements, waters, water rights, ditches, improvements, rights, privileges, and appurtenances thereunto in anywise belonging; being the same premises conveyed to the party of the first part by the Marshall Silver Mining Company by deed bearing date the 17th day of November,
438 1879 to have and to hold the lands, tenements, and hereditaments hereby conveyed unto the party of the second part, its successors and assigns, forever, and the said party of the first part, for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said party of the second part, its successors and assigns, that the said premises and every part thereof are free and clear of and from any and all liens, incumbrances trusts, and taxes, and that he, the said party of the first part, his heirs, executors, and administrators unto the said party of the second part, its successors and assigns, the said premises and every part thereof, against himself, his heirs, and assigns, and every other person lawfully claiming or to claim the same or any part thereof, to the full extent of the estate and property by the United States under its letters patent granted, shall and will warrent and forever defend.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

GEO. TURNBULL. [L. S.]

Sealed and delivered in presence of—
DANIEL G. THOMPSON.

STATE OF NEW YORK,
City and County of New York:

439 On this 16th day of December, 1879, before me personally appeared George Turnbull, to me known, and known by me to be the individual described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same.

[L. S.] DANIEL G. THOMPSON,
Notary Public, Kings Co.

Cert. filed in New York Co.

STATE OF NEW YORK,
City and County of New York, ss:

I, Hubert O. Thompson, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Daniel G. Thompson has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed instrument duly authorized to take the same; and further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine; I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

440 In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 17th day of Dec., 1879.

HUBERT O. THOMPSON,
Clerk.

Recorded January 15th, 1880, at 2 o'c. p. m.

S. S. HORTON,
Recorder.

STATE OF COLORADO,
Clear Creek County, ss:

I, F. L. Peck, clerk & recorder in and for said county, do hereby certify that the foregoing is a true, correct, and complete copy of deed, Geo. Turnbull, to the Colorado Central Consolidated Mining Co. as the same appears of record at page 217 of book 49, records of said county, together with the certificates of the recording thereof.

Witness my hand and official seal this 26th day of December, 1883.

{ SEAL CLEAR CREEK CO., COLORADO. } (S'g'd) F. L. PECK,
Recorder,
By GEO. W. KIRKLAND,
Deputy.

(Endorsed:) Certified copy of deed. Geo. Turnbull to the Colorado Central Cons. M. Co.

441 (Endorsed:) No. 1145. The United States vs. The Marshall Silver Mining Company and the Colorado Central Consolidated Mining Company. Exhibits of complainant and defendant. Filed April 26, 1884. (S'g'd) Edward F. Bishop, clerk.

(Here follows diagrams marked pages 442, 443, 444, and 445.)

446 And afterwards; and on, to wit, the 31st day of May, A. D. 1884, there was opened, published, and filed in said court and in said cause a certain deposition of Paul Lichtenstein et al., taken on behalf of the defendants. And the said deposition is in words and figures as follows, to wit:

Depositions of Paul Lichtenstein et al. in behalf of def'ts.

In the circuit court of the United States. District of Colorado.

THE UNITED STATES OF AMERICA
versus
THE MARSHALL SILVER MINING COMPANY and the Colorado Central Consolidated Mining Company.

STATE OF NEW YORK,
City and County of New York, ss:

The depositions of Paul Lichtenstein, Herman R. Baltzer, and Charles C. Dodge, of the county of New York and State of New York, witnesses, of lawful age, produced, sworn, and examined upon their respective corporal oaths on this 16th day of February, A. D. 1884, at my office, No. 115 Broadway, in the city, county, and State aforesaid, by me, Charles Nettleton, a commissioner duly appointed by a dedimus potestatum issued out of the clerk's office of the circuit court of the United States for the
447 district of Colorado, bearing teste in the name of the Chief Justice of the United States and the seal of said court affixed thereto, and to me directed as such commissioner for the examination of the said Paul Lichtenstein, Herman R. Baltzer, and Charles C. Dodge, witness' in a certain suit and matter in controversy now pending and undetermined in the said circuit court wherein the United States of America is plaintiff and the Marshall Silver Mining Company and the Colorado Central Consolidated Mining Company are defendants, in behalf of the said defendants, as well on the cross-interrogatories of the plaintiff as upon the interrogatories of the defendants, which were attached to the said commission and upon none others, as follows, viz:

HERMAN R. BALTZER, being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff as the defendants, in relation to the matters in controversy between the said plaintiff and defendants so far as he should be interrogated, testified and deposed as follows:

First direct interrogatory. What is your name, age, residence, and occupation?

Answer. My name is Herman R. Baltzer; aged 58 years; I
448 reside at Richmond Co., Staten Island, and I am by occupation a banker.

2nd. Second direct interrogatory. What office, if any, do you now hold in the Colorado Central Consolidated Mining Company, one of the defendants, and how long have you held said office?

Answer. I am vice-president & trustee, and have been since the year 1880.

3rd. Third direct interrogatory. Were you one of the original organizers or member of the original board of trustees of said company?

Answer. Yes.

4th. Fourth direct interrogatory. At the time of the purchase of the Tunnel Lode No. 5 by said company, in the winter of the year, 1879 & 1880, did you know or were you informed of the existence of a claim known as the Cayuga Lode?

Answer. I did not know, neither was I ever informed of the existence of a claim known as the Cayuga Lode.

5th. Fifth direct interrogatory. Were you at the time of said
449 purchase aware of any conflict in title, or conflict in surveys, between the Tunnel Lode No. 5 and said Cayuga Lode? If yea, state to what extent you were so informed.

Answer. I was not aware of any such fact.

6th. Sixth direct interrogatory. Were you at the time of such purchase, or at any time before such purchase, informed in any manner of any claim made against any part of the Tunnel Lode No. 5 on behalf of Erskine McClelland, Walter N. Webster, and Joseph Rist, or any of them?

Answer. I was not.

7th. Seventh direct interrogatory. When, if ever, did you first hear of the Cayuga Lode title or of the title of McClelland, Webster, and Rist, now asserted in this case?

Answer. I never heard of it.

8th. Eighth direct interrogatory. Did you ever have any knowledge, prior to your becoming interested in the Tunnel Lode No. 5, of the proceedings in the United States land office, either at Central City, Colorado, or at Washington, D. C., in the matter of the application for patent on said Cayuga Lode, or of the alleged conflict between said several titles?

450 Answer. I did not.

9th. Ninth direct interrogatory. Do you know anything further of advantage to either party in this cause pertinent to the above questions and not already stated by you in answer to the same? If yea, state the same fully and particularly.

Answer. I do not.

To the several cross-interrogatories propounded to the witness, he further deposeth and saith as follows:

1st X. First cross-interrogatory. What office, if any, did you hold in the Colorado Central Consolidated Mining Company at the time of its organization, and when did you enter upon the duties of such office?

Answer. I was vice-president and trustee at the time of its organization, and entered upon the duties of such office in 1880.

2nd X. Second cross-interrogatory. Were you ever upon the ground included in the Tunnel Lode No. 5, referred to in your direct examination; and, if so, when and in whose company; that is, who accom-
451 panied you and for what purpose did you visit said ground?

Answer. I was not.

3rd X. Third cross-interrogatory. Did the Colorado Central Consolidated Mining Company or any of its officers employ any attorney or agent to examine into the title of said Tunnel Lode No. 5; and, if so, whom did they employ for that purpose before purchasing the same?

Answer. I do not remember.

(S'g'd) H. R. BALTZER.

Subscribed in my presence and sworn to before me on this 16th day of February, A. D. 1884.

[SEAL.] (S'g'd) CHARLES NETTLETON,
Commissioner.

PAUL LICHTENSTEIN, being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of plaintiff as the defendant', in relation to the matters in controversy between the said plaintiff and defendants so far as he should be interrogated, testified and deposed as follows:

452 To the first interrogatory he saith: 1st. My name is Paul Lichtenstein; aged 36 years; I reside at Brooklyn, New York; I am by occupation a broker.

To the second interrogatory he saith: 2nd. I am the president of the Colorado Central Consolidated Mining Company; have been such president since the organization of such company in 1880.

To the third interrogatory he saith: 3rd. Yes.

To the fourth interrogatory he saith: 4th. I was not informed of the existence of a claim known as the Cayuga Lode.

To the fifth interrogatory he saith: 5th. I was not aware of any such conflict.

To the sixth interrogatory he saith: 6th. I was not.

To the seventh interrogatory he saith: 7th. Not before the commencement of this suit.

To the eighth interrogatory he saith: 8th. I did not.

To the ninth interrogatory he saith: 9th. I do not.

453 To the several cross-interrogatories he further deposeth and saith as follows:

To the first cross-interrogatory he saith: 1st X. I held the office of president since its organization, 1880; also as trustee.

To the second cross-interrogatory he saith: 2d X. I was never on said ground.

To the third cross-interrogatory he saith: 3rd X. An examination was made before purchasing, but who the attorney was I am not able now to state.

(S'g'd) PAUL LICHTENSTEIN.

Subscribed in my presence and sworn to before me this 16th day of February, A. D. 1884.

[SEAL.] (S'g'd) CHARLES NETTLETON,
Commissioner.

CHARLES C. DODGE, being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff as the defendants, in relation to the matters in controversy between the said plaintiff and defendants, so far as he should be interrogated, testified and deposed as follows:

1st. First direct interrogatory. What is your name, age, resi-
454 dence, and occupation?

Answer. My name is Charles C. Dodge; aged 42 years; I reside at New York City, New York, and I am by occupation a broker.

2nd. Second direct interrogatory. What office, if any, do you now hold in the Colorado Central Consolidated Mining Company, one of the defendants, and how long have you held said office?

Answer. None.

3rd. Third direct interrogatory. Were you one of the original organizers or members of the original board of trustees of said company?

Answer. I was one.

4th. Fourth direct interrogatory. At the time of the purchase of the Tunnel Lode No. 5 by said company, in the winter of the year 1879 & 1880, did you know or were you informed of the existence of a claim known as the Cayuga Lode?

Answer. I did not know, neither was I ever informed, of the existence of a claim known as the Cayuga Lode.

455 5th. Fifth direct interrogatory. Were you at the time of said purchase aware of any conflict in title, or conflict in surveys, between the Tunnel Lode No. 5 and said Cayuga Lode? If yea, state to what extent you were so informed.

Answer. I was not aware of any such fact.

6th. Sixth direct interrogatory. Were you at the time of such purchase, or at any time before such purchase, informed in any manner of any claim made against any part of the Tunnel Lode No. 5 on behalf of Erskine McClelland, Walter N. Webster, and Joseph Rist, or any of them?

Answer. I was not.

7th. Seventh direct interrogatory. When, if ever, did you first hear of the Cayuga Lode title, or of the title of McClelland, Webster, and Rist, now asserted in this case?

Answer. I never heard of it, so far as I can recollect.

8th. Eighth direct interrogatory. Did you ever have any knowledge prior to your becoming interested in the Tunnel Lode No. 5 of the pro-
ceedings in the United States land office, either at Central City,
456 Colorado, or at Washington, D. C., in the matter of the application for patent on said Cayuga Lode, or of the alleged conflict between said several titles?

Answer. I did not.

9th. Ninth direct interrogatory. Do you know anything further of advantage to either party in this cause pertinent to the above questions and not already stated by you in answer to the same? If yea, state the same fully and particularly.

Answer. I do not.

To the several cross-interrogatories propounded to the witness, he further deposeth and saith as follows:

1st X. First cross-interrogatory. What office, if any, did you hold in the Colorado Central Consolidated Mining Company at the time of its organization, and when did you enter upon the duties of such office?

Answer. I was one of the board of trustees in 1880.

2nd X. Second cross-interrogatory. Were you ever upon the ground included in the Tunnel Lode No. 5, referred to in your direct examination; and if so, when and in whose company; that is, who accompanied you and for what purpose did you visit said ground?

457 Answer. I was not.

3rd X. Third cross-interrogatory. Did the Colorado Central Consolidated Mining Company or any of its officers employ any attorney or agent to examine into the title of said Tunnel Lode No. 5; and if so, whom did they employ for that purpose before purchasing the same?

Answer. I think they did, but I do not remember who.

(S'g'd) CHAS. C. DODGE.

Subscribed in my presence and sworn to before me on this 16th day of February, A. D. 1884.

[SEAL.] (S'g'd) CHARLES NETTLETON,
Commissioner.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles Nettleton, of the county of New York, and State of New York, a commissioner duly appointed to take the depositions of the said Paul Lichtenstein, Herman R. Baltzer, and Charles C. Dodge, witnesses whose names are subscribed to the foregoing depositions, do hereby certify that previous to the commencement of the examination of the said

458 Paul Lichtenstein, Herman R. Baltzer, and Charles C. Dodge, as witnesses in the said between the said the United States of America, as plaintiff, and the Marshall Silver Mining Company & the Colorado Central Consolidated Mining Company, as defendants, they were each, respectively, first duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said parties, so far as they should be interrogated concerning the same; that the said depositions were taken by me and reduced to writing by E. J. Bunker, a disinterested third person, a clerk in my office, at my office, No. 115 Broadway, in the city, county, and State of New York, aforesaid, on the 16th day of February, A. D. 1884, and that after said depositions were taken by me as aforesaid the interrogatories and answers thereto as written down were carefully read over to each of said witnesses, respectively, by me, and that thereupon the same were signed and sworn to by the said deponents, Paul Lichtenstein, Herman R. Baltzer, and Charles C. Dodge, before me at the place and on the day and year last aforesaid, except that the depositions of Paul Lichtenstein was written down by Charles Edgar Mills, a clerk in my office, and employ, and not by E. J. Bunker, and that he wrote the same in my office in said city of New York in my presence and under my direction.

[SEAL.] (S'g'd) CHARLES NETTLETON,
Commissioner.

459 In the circuit court of the United States, district of Colorado.

THE UNITED STATES OF AMERICA
versus
THE MARSHALL SILVER MINING COMPANY and the Colorado Central Consolidated Mining Company.

STATE OF NEW YORK,
City and County of New York, ss:

The depositions of William H. Guion and Peter J. Claasen, of the County of New York and State of New York, witnesses of lawful age, produced, sworn, and examined upon their respective corporal oaths, on this 23rd day of February, A. D. 1884, at my office, No. 115 Broadway, in the city, county, and State aforesaid, by me, Charles Nettleton, a commissioner duly appointed by a dedimus potestatum, issued out of the clerk's office of the circuit court of the United States for the district of Colorado, bearing teste in the name of the Chief Justice of the United States, and the seal of said court affixed thereto, and to me directed as such commissioner, for the examination of the said William H. Guion and Peter J. Claassen of Kings County, New York, witness in a certain suit and matter
460 in controversy now pending and undetermined in the said circuit court, wherein the United States of America is plaintiff, and the Marshall Silver Mining Company and the Colorado Central Consolidated Mining Company are defendants, in behalf of the said defendants as well on the cross-interrogatories of the plaintiff as upon the interrogatories of the defendants which were attached to the said commission, and upon none others, as follows, viz:

WILLIAM H. GUION, being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff as the defendants in relation to the matters in controversy between the said plaintiff and defendants so far as he should be interrogated, testified and deposed as follows:

1st. First direct interrogatory. What is your name, age, residence, and occupation?

Answer. My name is William H. Guion; aged, 65 years; I reside at New York City, New York, and I am by occupation a merchant.

2nd. Second direct interrogatory. What office, if any, do you now hold in the Colorado Central Consolidated Mining Company, one of the defendants, and how long have you held said office?

461 Answer. I am trustee of said company, and have been since the year 1880.

3rd. Third direct interrogatory. Were you one of the original organizers or member of the original board of trustees of said company?

Answer. Yes.

4th. Fourth direct interrogatory. At the time of the purchase of the Tunnel Lode No. 5 by said company, in the winter of the year 1879 & 1880, did you know or were you informed of the existence of a claim known as the Cayuga Lode?

Answer. I did not know, neither was I ever informed of the existence of a claim known as the Cayuga Lode.

5th. Fifth direct interrogatory. Were you at the time of said purchase aware of any controversy in title or conflict in survey between the Tunnel Lode No. 5 and said Cayuga Lode? If yea, state to what extent you were so informed.

Answer. I was not aware of any such fact.

462 6th. Sixth direct interrogatory. Were you at the time of such purchase, or at any time before such purchase, informed in any manner of any claim made against any part of the Tunnel Lode No. 5 on behalf of Erskine McClelland, Walter N. Webster, and Joseph Rist, or any of them?

Answer. I was not.

7th. Seventh direct interrogatory. When, if ever, did you first hear of the Cayuga Lode title or of the title of McClelland, Webster, and Rist, now asserted in this case?

Answer. I never heard of it.

8th. Eighth direct interrogatory. Did you ever have any knowledge prior to your becoming interested in the Tunnel Lode No. 5 of the proceedings in the United States Land Office, either at Central City, Colorado, or at Washington, D. C., in the matter of the application for patent on said Cayuga Lode, or of the alleged conflict between said several titles?

Answer. I did not.

9th. Ninth direct interrogatory. Do you know anything further of advantage to either party in this cause pertinent to the above questions, and not already stated by you in answer to the same? If yea, state

463 the same fully and particularly.

Answer. I do not.

To the several cross-interrogatories propounded to the witness he further deposeth and saith as follows:

1st X. First cross-interrogatory. What office, if any, did you hold in the Colorado Central Consolidated Mining Company at the time of its organization, and when did you enter upon the duties of such office?

Answer. The office of trustee. I entered upon the duties of that office at the time of its organization in 1880.

2nd X. Second cross-interrogatory. Were you ever upon the ground included in the Tunnel Lode No. 5, referred to in your direct examination, and if so, when and in whose company, that is, who accompanied you and for what purpose did you visit said ground?

Answer. I was not.

3rd X. Third cross-interrogatory. Did the Colorado Central Consolidated Mining Company or any of its officers employ any attorney

464–5 or agent to examine into the title of said Tunnel Lode No. 5, and if so, whom did they employ for that purpose before purchasing the same?

Answer. I do not remember.

(S'g'd) WM. H. GUION.

Subscribed in my presence and sworn to before me on the 23rd day of February, A. D. 1884.

[SEAL.] (S'g'd) CHARLES NETTLETON,
Commissioner.

PETER J. CLAASSEN, being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff as the defendants in relation to the matters in controversy between the said plaintiff and defendants so far as he should be interrogated, testified and deposed as follows:

1st. First direct interrogatory. What is your name, age, residence, and occupation?

Answer. My name is Peter J. Claassen; I am 50 years of age; I reside in Brooklyn, Kings County, New York; and I am by occupation a merchant.

466 2nd. Second direct interrogatory. What office, if any, do you now hold in the Colorado Central Consolidated Mining Company, one of the defendants, and how long have you held said office?

Answer. I think I was one of the incorporators of said company; but hold no office now.

3rd. Third direct interrogatory. Were you one of the original organizers or member of the original board of trustees of said company?

Answer. I do not remember. I think I was an incorporator.

4th. Fourth direct interrogatory. At the time of the purchase of the Tunnel Lode No. 5, by said company, in the winter of the year 1879 & 1880, did you know, or were you informed, of the existence of a claim known as the Cayuga Lode?

Answer. I did not know, neither was I ever informed of the existence of a claim known as the Cayuga Lode.

5th. Fifth direct interrogatory. Were you at the time of said purchase aware of any conflict of title, or conflict in surveys between the

467 Tunnel Lode No. 5 and said Cayuga Lode? If yea, state to what extent you were so informed.

Answer. I was not aware of any such fact.

6th. Sixth direct interrogatory. Were you at the time of such purchase or at any time before such purchase, informed in any manner of any claim made against any part of the Tunnel Lode No. 5, on behalf of Erskine McClelland, Walter N. Webster, and Joseph Rist, or any of them?

Answer. I was not.

7th. Seventh direct interrogatory. When, if ever, did you first hear of the Cayuga Lode title, or of the title of McClelland, Webster, and Rist now asserted in this case?

Answer. I never heard of it.

8th. Eighth direct interrogatory. Did you ever have any knowledge prior to your becoming interested in the Tunnel Lode No. 5, of the proceedings in the United States Land Office, either at Central City, Colorado, or at Washington, D. C., in the matter of the application for patent on said Cayuga Lode or of the alleged conflict between said several titles?

468 Answer. I *do* not.

To the several cross-interrogatories propounded to the witness, he further deposeth and saith as follows:

1st X. First cross-interrogatory. What office, if any, did you hold in the Colorado Central Consolidated Mining Company at the time of its organization, and when did you enter upon the duties of such office?

Answer. I believe I was an incorporator; some time in 1880.

2nd X. Second cross-interrogatory. Were you ever upon the ground included in the Tunnel Lode No. 5, referred to in your direct examination, and if so, when, and in whose company; that is, who accompanied you, and for what purpose did you visit said ground?

Answer. I was not.

3rd X. Third cross-interrogatory. Did the Colorado Central Consolidated Mining Company, or any of its officers, employ any attorney or agent to examine into the title of said Tunnel Lode No. 5, and if so, whom did they employ for that purpose before purchasing the same?

469 Answer. I do not remember.

(S'g'd) PETER J. CLAASSEN.

Subscribed in my presence and sworn to before me on this 23d day of February, A. D. 1884.

[SEAL.] CHARLES NETTLETON,
Commissioner.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles Nettleton, of the county of New York and State of New York, a commissioner duly appointed to take the depositions of the said William H. Guion and Peter J. Claassen, witnesses whose names are subscribed to the foregoing depositions, do hereby certify that previous to the commencement of the examination of the said William H. Guion and Peter J. Claassen, as witnesses in the said between the said The United States of America, as plaintiff, and the Marshall Silver Mining Company & The Colorado Central Consolidated Mining Company, as defendants, they were each respectively first duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the
470 matters in controversy between the said parties, so far as they should be interrogated concerning the same That the said depositions were taken by me and reduced to writing by E. J. Bunker, a disinterested third person, a clerk in my office, at my office, No. 115 Broadway, in the city, county, and State of New York, aforesaid, on the 23rd day of February, A. D. 1884, and that after the said depositions were taken by me as aforesaid, the interrogatories and answers thereto, as written down, were carefully read over to each of said witnesses respectively by me, and that thereupon the same were signed and sworn to by the said deponents, William H. Guion and Peter J. Claassen, before me at the place and on the day and year last aforesaid.

In witness whereof I have hereunto set my hand and seal.

[SEAL.] (S'g'd) CHARLES NETTLETON,
Commissioner.

471 THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA,
District of Colorado, ss:

The President of the United States of America to Charles Nettleton, esq., a residing at New York, in the county of New York, and State of New York, greeting:

Whereas, it has been represented that George Turnbull, Paul Lichtenstein, Herman R. Baltzer, Charles C. Dodge, Dennis C. Wilcox, William

A. Guion, James C. Parrish, Charles F. Fag, and Peter J. Claassen are material witnesses in a certain cause now pending in the circuit court of the United States for the district of Colorado, wherein the United States of America complainant, and the Marshall Silver Mining Company and the Colorado Central Consolidated Mining Company are defendants, and that the said witnesses reside at New York, aforesaid, without the said district of Colorado, and that their personal attendance cannot be procured at the trial of the said cause:

Now, know ye that, in confidence of your prudence and fidelity, you have been appointed and by these presents you are invested with full power and authority as a commissioner to examine the said wit-
472 nesses, and you are hereby authorized to require the said witnesses to come before you at such times and place as you may designate and appoint, and diligently to examine said witnesses, on the oath or affirmation of the said witness, by you first duly in that behalf administered, and faithfully to take the deposition of the said witnesses upon all interrogatories and cross-interrogatories attached to these presents on the part of the said defendants, and none other; and the same, when taken, together with this commission and the said interrogatories, to certify into our said circuit court in a sealed envelope, with the least possible delay.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at the city of Denver, in the district aforesaid, this 3rd day of December, A. D. 1883, and of the Independence of the United States the 108th year.

{ SEAL U. S. CIR. COURT. } EDWARD F. BISHOP, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

(Endorsed:) 1145. In the circuit court of the United States for the district of Colorado. Depositions of witnesses, taken on the part of the defendant. To Edward F. Bishop, esq., clerk of the circuit court of the United States, Denver, Colorado.

473 UNITED STATES OF AMERICA, *ss*:

In the circuit court of the United States' district of Colorado.

THE UNITED STATES OF AMERICA
vs.
THE MARSHALL SILVER MINING COMPANY and the Colorado Central Consolidated Mining Company.

To honorable A. W. BRAZEE, solicitor for complainant:

Please take notice that in the above-entitled cause we will sue out of the office of the clerk of said court a dedimus, to take the depositions of George Turnbull, Paul Lichtenstein, Herman R. Baltzer, Charles C. Dodge, Dennis C. Wilcox, William H. Guion, James C. Parrish, Charles F. Fay, and Peter J. Claassen, all residents of, or doing business in, the city, county, and State of New York, before Charles Nettleton, of No 117 Broadway,

in said city of New York, at his said office, upon interrogatories, a copy of which you receive with this notice to which interrogatories you may add cross-interrogatories as you may see fit.

(S'g'd) BELA M. HUGHES,
Solicitor for the M. S. M. Co.
R. S. MORRISON,
Solicitor for the C. C. C. M. Co.

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474 Here follows interrogatories and cross-interrogatories, not copied here because already copied in the evidence.

(Endorsed:) 1145. Circuit court U. S. The United States vs. The Marshall Silver Mining Co. et al. Deposition of Paul Lichtenstein et al., behalf of defendants. Filed Dec. 3, 1883. (S'g'd) Edward F. Bishop, clerk. Opened, published, and filed May 31, 1884. (S'g'd) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 24th day of October, A. D. 1884, the same being one of the regular juridical days of the October term, A. D. 1884, of said court—present, the honorable David J. Brewer, circuit judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Final decree.

475 THE UNITED STATES OF AMERICA
vs.
THE MARSHALL SILVER MINING COMPANY and the Colorado Central Consolidated Mining Company.
} In chancery. Bill to vacate patents, and for other relief.

This cause came on to be heard at this term and was ~~agreed~~ argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz, that the plaintiffs' bill do stand dismissed out of this court with costs to be taxed herein against the said plaintiff.

And thereupon the said complainant excepts to said decree and prays an appeal therefrom to the Supreme Court of the United States, wherefore it is further ordered that the complainants' prayer for an appeal be, and is hereby, allowed, pursuant to the statute in such case made and provided.

Done on the 17th day of October, A. D. 1884.

And afterwards, and on, to wit, the 16th day of December, A. D. 1884, came again the said complainant, by its solicitors aforesaid, and filed in said court and in said cause its præcipe for a transcript and citation on appeal to the Supreme Court of the United States.

And the said præcipe is in words and figures as follows, to wit:

476 *Præcipe for transcript and citation.*

UNITED STATES OF AMERICA,
Eighth Circuit, District of Colorado, ss:

In the circuit court of the United States for said circuit & district.

THE UNITED STATES OF AMERICA, complainant, *vs.* THE MARSHALL SILVER MINING COMPANY & the Colorado Central Consolidated Mining Company, defendants.	No. 1145. In chancery.

The above-named complainant, conceiving itself aggrieved by the final decree entered on the seventeenth day of October, 1884, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States, as heretofore prayed and allowed, and prays that a transcript of all the record, proceedings, testimony, evidence, maps, plats, exhibits, and files in this cause, duly authenticated, may be sent to said Supreme Court without delay, and that a citation to the said defendants to appear in the said Supreme Court to answer said appeal may issue herein returnable according to law & the rules of the said Supreme Court.

477 (S'g'd) BENJAMIN HARRIS BREWSTER,
Attorney-General.
ANDREW W. BRAZEE,
Attorney of the United States for the District of Colorado.

Dated Dec. 16th, 1884.

(Endorsed:) No. 1145. U. S. circuit court, district of Colorado. In chancery. The United States vs. The Marshall Silver Mining Company et al. Appeal by United States. A. W. Brazee, U. S. attorney. Filed Dec. 16, 1884. (S'g'd) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 31st day of December, A. D. 1884, came again the said complainant and sued out of said court a writ of citation to the Supreme Court of the United States, and the said citation is hereto attached, to wit:

478 *Citation, U. S. Supreme Court.*

THE UNITED STATES OF AMERICA,
District of Colorado:

The United States of America to the Marshall Silver Mining Company and the Colorado Central Consolidated Mining Company, greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden at Washington, District of Columbia, on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States in

and for the district of Colorado wherein the United States of America is appellant and you The Marshall Silver Mining Company and The Colorado Central Consolidated Mining Company are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Moses Hallett, judge of the circuit court of the United States for the district of Colorado, this 31st day of December, in the year of our Lord one thousand eight hundred and eighty-four.

MOSES HALLETT,
Judge.

479 (Indorsed:) Gen. No. 1145. Supreme Court of the United States, district of Colorado. The United States, appellant, vs. The Marshall Silver Mining Company et al, appellee. Citation. Filed in circuit court of the U. S. this 26th day of of Jan., A. D. 1885. Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk. Benjamin Harris Brewster, Attorney-General, for Appellant.

Proof of service.

THE UNITED STATES OF AMERICA,
District of Colorado, ss:

On this 26th day of January, A. D. 1885, personally appeared John W. Belcher before me, the subscriber, a clerk of the circuit and district courts of the United States, for the district of Colorado, and makes oath that he delivered a true copy of the within citation to Francis J. Marshall, president of the said Marshall Silver Mining Company, at Denver, Arapahoe County, State of Colorado, on the 31st day of December, 1884, and also delivered to George W. Hall, general superintendent and general manager of the Colorado Central Consolidated Mining Company aforesaid, a true copy of the within citation at Denver aforesaid on January 23d, 1885, and that deponent served said citation, as aforesaid, as deputy marshal of the district of Colorado.

JOHN W. BELCHER.

Sworn to and subscribed before me this 26th day of January, A. D. 1885.

[SEAL.] EDWARD F. BISHOP,
Clerk,
By F. W. TUPPER,
Deputy Clerk.

Fees: Service 2 d'fts @ $2.00 each, $4.00; mileage, going only, to serve 2 ms. 12—total, $4.12.

480 UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Edward F. Bishop, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore filed or had and entered of record in said court and in a certain cause lately in said court pending, wherein

the United States of America was plaintiff and the Marshall Silver Mining Company et al. were defendants, as fully and completely as the same still remain on file or of record in my office.

In testimony to the above, I do hereunto sign my name and affix the seal of said court at Denver, in said district, this 29th day of January, A. D. 1885.

[SEAL.] EDWARD F. BISHOP,
Clerk,
By F. W. TUPPER,
Deputy Clerk.

Cost of transcript: 1,295 folios, @ 10c., 129.50; 9 tracings, 27.00; certificate, .35—$156.85; pd. by complainant.

(Indorsement on cover:) No. 819. The United States, appellant, vs. The Marshall Silver Mining Company and The Colorado Central Consolidated Mining Company. Colorado, C. C. U. S. Filed February 6, 1885.